Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

E. B. Rood and
R. Bruce McLaughlin, *Petitioners,*

v.

The City of Oldsmar, a Florida
Municipal Corporation, *Respondent.*

On Petition for a Writ of Certiorari to the
District Court of Appeal
of the Second District of Florida

PETITION FOR A WRIT OF CERTIORARI

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Petitioners, *Pro Se*

3 02 PP

QUESTION PRESENTED FOR REVIEW

1. Whether the District Court of Appeal failed to follow the mandate found in the Fifth and Fourteenth Amendments to the Constitution of the United States when it reinstated a Declaratory Judgment action seeking a declaration that Comprehensive Plan designations were arbitrary and capricious, without reinstating a companion action for damages?

TABLE OF CONTENTS

QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
PROCEEDINGS BELOW	7
REASONS WHY CERTIORARI SHOULD BE GRANTED	9
JUST COMPENSATION	10
CONCLUSION	19

APPENDICES

Notification of Enlargement of Time to File Petition for Writ of Certiorari A-1

Order Denying Motion for Rehearing, Second District Court of Appeal A-4

Opinion, Second District Court of Appeal A-6

Order Dismissing Counts of Third Amended Complaint With Prejudice A-14

Order Dismissing Fourth Amended Complaint With Prejudice A-28

Third Amended Complaint A-31

Fourth Amended Complaint A-123

TABLE OF AUTHORITIES

Agins v. City of Tiburon, 447 U.S. 255 (1980) 17

Bateson v. Geisse, 857 F.2d 1300 (9th Cir. 1988) 18

Brown v. Pinellas County, 420 So.2d 308 (Fla. 2d DCA 1982) 5

Conley v. Gibson, 355 U.S. 41, (1957) 8

Couf v. DeBlaker, 652 F.2d 587, 590 (5th Cir. 1981) 18

Eide v. Sarasota County, 908 So.2d 716 (11th Cir. 1990) 12 - 14

First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304, (1987) 10, 18

Howlett v. Rose, 496 U.S. 356, (1990) 9

Lucas v. South Carolina Coastal Commission,
502 U.S. 966 (1992) 11, 18

Pinellas County v. Ashley, 464 So.2d 176
(Fla. 2d DCA 1985) 5

Rood and McLaughlin v. City of Oldsmar,
21 Fla.L.W. D903 *seriatim*

Rood v. Pinellas County, 15 F.3d 1096
(11th Cir. 1994) 6

Stansberry v. Holmes, 613 F.2d 1285
(5th Cir. 1980) 17

Wheeler v. City of Pleasant Grove,
664 F.2d 99 (5th Cir. 1981), *cert. denied*,
456 U.S. 973, 102 S.Ct. 2236; affirmed,
746 F.2d 1437 (11th Cir. 1984);
833 F.2d 267 (11th Cir. 1987) 14 - 16

Constitution of the United States

Amendment V i, 3, 19

Amendment XIV i, 3, 19

United States Statutes

28 U.S.C. § 1257(i) 2

42 U.S.C. § 1983 4, 9, 19

Constitution of the State of Florida

Article V, § 3(b) 2

Florida Statutes

§ 163.3220 6

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The City of Oldsmar, a Florida
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On Petition for a Writ of Certiorari to the
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PETITION FOR A WRIT OF CERTIORARI

E. B. Rood and R. Bruce McLaughlin respectfully petition for a writ of certiorari to review

the judgment of the District Court of Appeal for the Second District of Florida entered in this proceeding on April 9, 1996, (Appendix at A-6 - A-13) and for which rehearing was denied on May 9, 1996. (Appendix at A-4 - A-5)

OPINIONS BELOW

The opinion of the Second District Court of Appeal of the Second District of Florida is reported at 21 Fla.L.W. D903. (Appendix at A-6 - A-13) The Order denying Petitioners' Motion for Rehearing (Appendix at A-4 - A-5) is unpublished. The Orders of the Circuit Court of the Sixth Judicial Circuit Dismissing this Action (Appendix at A-14 - A-30) are also unpublished.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(1). The District Court of Appeal for the Second District of Florida entered its judgment on April 12, 1996 and denied a motion for rehearing on May 9, 1996. Pursuant to Article V, § 3(b) of the Constitution of the State of Florida, the

decision of the District Court of Appeal is a final decision from the highest court of the state with jurisdiction over this matter. On July 26, 1996 Justice Kennedy extended the time for the filing of this Petition until September 4, 1996. (Appendix at A-1 - A-2.)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment V

The Fifth Amendment to the Constitution of the United States provides in pertinent part: "... nor shall any person be ... deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Constitution of the United States, Amendment XIV

The Fourteenth Amendment provides in pertinent part: "... nor shall any State deprive any person of

life, liberty, or property, without due process of law, ..."

42 U.S.C. § 1983

42 U.S.C. § 1983 provides in pertinent part: "Every person who, under color of state law ... subjects, or causes to be subjected, any citizen ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, ..." 42 U.S.C. § 1983.

STATEMENT OF THE CASE

Rood and McLaughlin (by McLaughlin's predecessor,) owned adjacent parcels of land totalling approximately 135 acres within the City of Oldsmar. At all times material hereto, the lands of Rood and McLaughlin were zoned General Commercial and Residential Planned Development at 7.5 units per acre.

However, under the City's Comprehensive

Plan, Rood's property was solely in a Medium Density Residential designation and McLaughlin's property was solely in an Open Space designation. Under Florida law, the Comprehensive Plan designation takes precedence over a Zoning Ordinance [1] and Rood and McLaughlin's predecessor were prohibited by the City from using their land in accordance with its zoning.

In 1988, Rood and McLaughlin's predecessor reached agreement with the City for changes to the City's Comprehensive Plan that permitted a reasonable form [2] of development for their properties. Rood, McLaughlin's predecessor, and the City then entered into a Development Agreement

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1 See, generally, *Brown v. Pinellas County*, 420 So.2d 308 (Fla. 2d DCA 1982), and *Pinellas County v. Ashley*, 464 So.2d 176 (Fla. 2d DCA 1985) and § 163.3194(1)(b), Florida Statutes.

2 The City argued, and the Trial Court agreed, that the 1988 Development Agreement stated that the previous Comprehensive Plan designations were reasonable and appropriate. However the same agreement stated that the previous Zoning Districts were also reasonable and appropriate. Since the Zoning Districts conflicted with the Comprehensive Plan designation, there is clearly a conflict within the Agreement, which required a trial on the merits.

pursuant to § 163.3220, Florida Statutes, to reflect and implement their agreement. However, the implementation of the Development Agreement with the City was foreclosed by actions of Pinellas County. [3]

Subsequently Rood renegotiated the Development Agreement with the City, but the renegotiated Development Agreement was foreclosed by the foreclosure of a Mechanic's Lien filed by McLaughlin. Thereafter, the parties attempted to resolve their differences and enter a further amendment to the Development Agreement but, at all times material hereto, were unable to do so.

Rood, from at least 1988 to 1996, and McLaughlin from May, 1992, until February, 1996, were subjected to the arbitrary and capricious Comprehensive Plan designations on their properties, which designations took **all** beneficial use of McLaughlin's property and deprived Rood of his reasonable investment-backed expectations. In particular, the open space designation on McLaughlin's property permitted no land uses other

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[3] See *Rood v, Pinellas County*, table opinion at 15 F.3d 1096 (11th Circuit, 1994), and Case No. 93-1798 before this Court.

than open uses which were effectively dedicated to a public purpose, without compensation.

PROCEEDINGS BELOW

When they were unable to reach further agreement with the City, Rood and McLaughlin filed suit against the City of Oldsmar seeking a Declaratory Judgment with respect to certain aspects of the Development Agreement and damages with respect to, *inter alia*, the imposition of the Comprehensive Plan designations on their properties. (Appendix at A-31, *et.seq.*, A-80, Count IV {Third Amended Complaint}; A-103, Count IX. {Third Amended Complaint}, and A-151, Count III {Fourth Amended Complaint}) [4]

The City repeatedly sought and achieved dismissals of the complaint based on the alleged

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[4] Certain counts were dismissed with prejudice from the Third Amended Complaint and other counts were dismissed from the Fourth Amended Complaint. Because the arbitrary and capricious damage count was dismissed with prejudice in the Third Amended Complaint (Appendix at A-103, Count IX,) the Third Amended Complaint is included in the Appendix.

non-compliance of Rood and McLaughlin with Florida's Rules of Civil Procedure. (*e.g.* Appendix at A-8, *et.seq.*). [5] The Circuit Court finally dismissed the entire action with prejudice (Appendix at A-25, A-30) and Rood and McLaughlin filed a timely appeal to Florida's Second District Court of Appeal.

The Second District Court of Appeal reinstated four counts of the final complaint, three seeking various Declaratory Judgments and one seeking damages for slander of title. Although the Court of Appeal reinstated (Appendix at A-12,) the count

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[5] Such dismissals were clearly inconsistent with Federal Constitutional law:

> In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim **unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.** [Emphasis added; footnote omitted] *Conley v. Gibson*, 355 U.S. 41, (1957).

However, this Petition for Writ of Certiorari focusses only on the key issue of damages to compensate for the arbitrary and capricious Comprehensive Plan designations.

seeking a Declaratory Judgment that the Comprehensive Plan designations applied to the property of Rood and McLaughlin were arbitrary and capricious, (Appendix at A-151, Count III, Fourth Amended Complaint) the Court refused to reinstate the companion count seeking damages for the time in which the arbitrary and capricious Comprehensive Plan designations were in place. (Appendix at A-12, A-103, Count IX, Third Amended Complaint) This Petition ensued.

REASONS WHY CERTIORARI SHOULD BE GRANTED

In addition to the obvious desirability of correcting the error below, there is a compelling reason why certiorari should be granted in this case.

This Court has held that actions under 42 U.S.C. § 1983 may be brought in state court. [6] However, the ability of a Plaintiff to seek redress in State Court under 42 U.S.C. § 1983

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[6] *Howlett v. Rose*, 496 U.S. 356, (1990). *Howlett* also came to this Court from Florida's Second District Court of Appeal.

will be meaningless if the State Courts refuse to permit damage actions, even where they find a valid cause of action for declaratory and injunctive relief arising from the same cause of action.

JUST COMPENSATION

Rood and McLaughlin seek **both** a Declaratory Judgment that the Comprehensive Plan designations applicable to their properties were arbitrary and capricious and damages for the temporary taking of their properties while those designations were in place. The District Court of Appeal has permitted Rood and McLaughlin to prosecute a Declaratory Judgment action seeking a declaration that the Comprehensive Plan designations applicable to their properties were arbitrary and capricious, (Appendix at A-12,) but has refused to reinstate the companion damage case, (Appendix at A-12) in direct contravention of the mandate of this Court. In *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, (1987) this Court held:

> "... We merely hold that where the government's activities have already worked a taking of all use of property, no subsequent action by the government can relieve it of the duty to provide compensation for the period during which the taking was effective." *Id.*

Petitioners seek nothing more than for the State Courts to enforce the duty of the City to provide Rood and McLaughlin with compensation for the period in which their property was taken by the City's arbitrary and capricious Comprehensive Plan designations.

More recently in *Lucas v. South Carolina Coastal Commission*, 502 U.S. 966 (1992), the Court held:

> "... When, however, a regulation that declares 'off-limits' all economically productive or beneficial uses of land goes beyond what the relevant background principles would dictate, compensation must be paid to sustain it." [Footnote omitted] *Id.* at 2901.

In the instant case, the District Court of Appeal has permitted a determination of whether the regulation at issue "declares 'off-limits' all economically ... beneficial uses of [Petitioners'] land", but has refused to permit Petitioners to obtain the compensation necessary to sustain the regulation.

In *Eide v. Sarasota County*, 908 So.2d 716 (11th Cir. 1990), the Eleventh Circuit identified the four types of takings claims which can be litigated. With respect to the arbitrary and capricious takings claim at issue herein, the Court held:

> "... a plaintiff may argue that a regulation is arbitrary and capricious, does not bear a substantial relation to public health, safety, morals or general welfare, and is therefore an invalid exercise of the police power. *See Nectow v. City of Cambridge*, 277 U.S. 183, 236, [*sic*] 48 S.Ct. 447, 448 , 72 L.Ed. 842 (1928); *Greenbriar v. City of Alabaster*, 881 F.2d 1570, 1577 (11th Cir. 1989); *Stansberry v. Holmes*, 613 F.2d 1285, 1289 (5th Cir. [1980]), *cert. denied* 449 U.S. 886, 101 S.Ct. 240, 66

L.Ed.2d 112 (1980); *but see Shelton v. City of College Station*, 780 F.2d 475, 482 (5th Cir. 1986 (en banc) (zoning is quasi-legislative action, and, therefore, zoning decisions need only have conceivable rational basis), *cert. denied*, 477 U.S. 905, 106 S.Ct. 3276, 91 L.Ed.2d 566, 479 U.S. 822, 107 S.Ct. 89, 93 L.Ed.2d 41 (1986). We will refer to such a claim as an 'arbitrary and capricious due process' claim. [9] ... To prove an arbitrary and capricious due process claim, a plaintiff need only prove that the government has acted arbitrarily and capriciously. [Footnote omitted] Such a challenge may be either a facial or an as applied challenge. ... In the case of an as applied challenge, the remedy is an injunction preventing the unconstitutional application of the regulation to plaintiff's property and/or damages resulting from the unconstitutional application. ..."

> [9] Most courts have referred to this type of claim as a substantive due process claim. ..." *Eide* at 721-22.

Thus, the *Eide* Court properly followed the mandate of this Court in identifying the remedy for arbitrary and capricious land use regulations: injunctive relief and damages as appropriate.

In *Wheeler v. City of Pleasant Grove*, 664 F.2d 99 (5th Cir. 1981), *cert. denied*, 456 U.S. 973, 102 S.Ct. 2236; affirmed, 746 F.2d 1437 (11th Cir. 1984); 833 F.2d 267 (11th Cir. 1987); and 896 F.2d 1347 (11th Cir. 1990), a property owner had a legitimate permit to build an apartment complex, pursuant to the then existing Zoning Code. In response to an outcry by neighboring property owners, the City passed a new Zoning Ordinance which effectively revoked the Building Permit. The Circuit Court held:

> "The district court held that the implementation of city Ordinance no. 216 was arbitrary and capricious, and was specifically intended to prevent the plaintiffs from exercising their building

permit. As applied to plaintiffs, Ordinance no. 216 was found to be a confiscatory measure and violative of the plaintiffs' fourteenth amendment rights to due process. Further, the ordinance bore no substantial relationship to legitimate concerns for health, safety, welfare, or the general well-being of the community. We agree." *Wheeler I*, 664 F.2d at 100.

"The issue of liability is settled in this case. In *Wheeler I* a panel of the former Fifth Circuit held that the City of Pleasant Grove had engaged in a taking when it applied Ordinance No. 216 against the plaintiffs. In *Wheeler II* we held that a necessary implication of the *Wheeler I* holding was that the plaintiffs were entitled to compensation for the injury they sustained as a result of the temporary taking." *Wheeler III*, 833 F.2d at 270.

When the United States District Court continued to refuse to properly award damages, an obviously frustrated panel of the Eleventh Circuit (*Wheeler IV*, 896 F.2d at 1349) actually calculated the damages due to the property owner, (*Id.* at 1352). Therefore, it is clear, that when a local government acts in a fashion that is arbitrary and capricious, and not rationally related to the legitimate exercise of the police power, the result is to be an award of damages to the affected property owner.

The District Court has permitted Rood and McLaughlin to avail themselves of the first part of the remedy identified in *Eide, supra*, with a Declaratory Judgment action, but has denied them the ability to avail themselves of the second part of the remedy - damages for their losses which were proximately caused by the City of Oldsmar's unconstitutional action.

There are numerous federal judicial declarations of when a taking occurs:

> "The application of a general zoning law to particular property effects a taking if the ordinance does not substantially advance legitimate state

interests ..." *Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980).

"... Given ... the importance of zoning as an instrument of community control over private property, this Court has decided that the proper standard of review of zoning ordinances is limited to the question 'whether the action ... is arbitrary and capricious, having no substantial relation to the general welfare.'..." *Stansberry v. Holmes*, 613 F.2d 1285 (5th Cir. 1980).

"Our en banc opinion in *South Gwinnett Venture [v Pruitt*, 491 F.2d 5 (5th Cir.] explicitly holds that 'The *only* question which federal district courts may consider is whether the action of the zoning commission is arbitrary and capricious, having no substantial relation to the general welfare.' 491 F.2d at 7." [Emphasis by the Court]

Couf v. DeBlaker, 652 F.2d 587, 590 (5th Cir. 1981).

Other Circuits have also recognized the need for damages for the arbitrary and capricious land use actions by local governments:

> "Accordingly we find that the city council's decision to arbitrarily withhold Bateson's building permit 'may fairly be said to represent official policy,' and acted as the 'moving force' behind Bateson's constitutional injury. Consequently, the City ... and the individual city council members, are liable for Bateson's constitutional injury." *Bateson v. Geisse*, 857 F.2d 1300 (9th Cir. 1988) at 1304.

The situation in which Rood and McLaughlin find themselves falls squarely within the foregoing analyses of compensable takings, and mere invalidation of the Comprehensive Plan designations is an insufficient remedy.

This Court has ruled, *First English, Lucas,*

supra, that when an unconstitutional taking occurs, as a matter of fact, then, as a matter of law, pursuant to the Fifth and Fourteenth Amendments to the Constitution of the United States, compensation must follow. By permitting Rood and McLaughlin to prosecute their Declaratory Judgment action, but not the companion damage complaint, the lower courts departed from established precedent of this Court, and certiorari should be granted to achieve consistency between this Court's rulings and those below.

CONCLUSION

This case presents an important issue of public policy and federal law - whether the State Courts, which clearly have jurisdiction over actions brought pursuant to 42 U.S.C. § 1983 - must follow the Constitutional mandate found in the Fifth and Fourteenth Amendments, to permit damage actions to enforce Declaratory Judgments in land use and zoning matters.

Therefore, certiorari should be granted to ensure that State Courts clearly understand that

damages are an integral part of Constitutional land use jurisprudence, and this issue should be decided on the merits.

Respectfully submitted,

/s/ E. B. Rood
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Counsel of Record, *pro se.*

/s/ R. Bruce McLaughlin
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No. _____

IN THE

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OCTOBER TERM, 1996

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v.
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On Petition for a Writ of Certiorari to the
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APPENDICES TO PETITION FOR A WRIT OF CERTIORARI

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SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
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WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

July 26, 1996

Mr. R. Bruce McLaughlin
900 Gulf Boulevard
No. 303
Indian Rocks Beach, FL 34635

Re: E. B. Rood And R. Bruce McLaughlin
v. City of Oldsmar
Application No. A-60

Dear Mr. McLaughlin:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kennedy, who on July 26, 1996, extended the time to and including September 4, 1996.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By

/s/

Sandra Elliott Spagnolo
Assistant Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

NOTIFICATION LIST

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William A. Haddad
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IN THE SECOND DISTRICT COURT
OF APPEAL, LAKELAND, FLORIDA

MAY 9, 1996

E. B. ROOD and R. BRUCE MCLAUGHLIN,	)	
Appellant(s),	)	
V.	)	Case No. 94-02479
THE CITY OF OLDSMAR, et al.,	)	
Appellee(s).	)	

BY ORDER OF THE COURT:

Appellee's motion to strike appellants motion for clarification is hereby deniedc. [*sic*].

Appellant's motion for clarification and reconsideration is hereby denied.

The joint motion for clarification is also denied. The reason this court specified the counts it was reinstating in each amended complaint was so that there would be no confusion as to exactly the 4 counts being reinstated.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

WILLIAM A. HADDAD, CLERK

c: E. B. Rood, Esq.
R. Bruce McLaughlin
Bryan A. Kutchins, Esq.
Thomas J. Trask, Esq.
/PM

SEAL

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED DETERMINED

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

SECOND DISTRICT

E. B. ROOD and R. BRUCE MCLAUGHLIN,	)	
Appellant(s),	)	
V.	)	Case No. 94-02479
THE CITY OF OLDSMAR,	)	
Appellee(s).	)	

Opinion filed April 12, 1996

Appeal from the Circuit
Court for Pinellas County;
Richard A. Luce, Judge.

E. B. Rood, Pro Se Appellant.

R. Bruce McLaughlin, Pro So
Appellant.

Bryan A. Kutchins of Kutchins,
Bishop & Schultz, P.A., Oldsmar,
for Appellee.

CAMPBELL, Judge.

Appellants. E. B. Rood and R. Bruce McLaughlin, challenge the dismissal with prejudice of certain counts of their third amended complaint and the dismissal with prejudice of their entire fourth amended complaint. We affirm in part and reverse in part.

Appellants Road and McLaughlin own adjacent parcels of land in Oldsmar. Appellants' actions against appellee, the city of Oldsmar (Oldsmar), arise out of appellants' unsuccessful

attempts to develop their properties in accord with Oldsmar's and other governmental entities' regulations. Since this appeal may be disposed of on procedural grounds, we need not relate the rather complicated facts set forth by appellants in their attempt to allege a cause of action against Oldsmar.

When appellants were unable to develop the property as they desired, they filed their original complaint consisting of nine counts against Oldsmar and other individual defendants who are not parties to nor affected by this appeal. An amended complaint was then filed in response to defensive Motions by two of the individual defendants. The amended complaint again consisted of nine counts contained in 168 numbered paragraphs and thirty-eight pages. Oldsmar filed a motion to dismiss all nine counts of the amended complaint on February 19, 1993. The initial trial judge, based on a stipulation of the parties, dismissed with prejudice Counts IV, V, and IX of the amended complaint. The trial judge also, an the basis of Oldsmar's motion to dismiss, dismissed Counts I, II, III, VI, VII and VIII with leave to file a second amended complaint.

Appellants, on March 16, 1993, filed a

narrative-type, second amended complaint containing eleven counts in 261 numbered paragraphs and fifty-five pages. Thereafter, on August 9, 1993, the initial trial judge specifically found that Counts I, III, V and XI of the second amended complaint adequately stated causes of action against Oldsmar. That order also dismissed with leave to amend, according to specific directions by the trial judge, Counts II, IV, VI, VII, VIII, IX and X.

Appellants, on August 27, 1993, filed a third amended narrative-type complaint, this time consisting of twelve counts contained in 298 separately-numbered paragraphs and sixty-three pages. Counts I, III, IV and XII of the third amended complaint alleged the same causes of action as Counts I, III, V and XI of the second amended complaint. A newly assigned trial judge again denied Oldsmar's motion to dismiss those counts.

Oldsmar's motion to dismiss Counts III, V, VII, VIII, IX, X and XI of the third amended complaint was granted, and those counts were dismissed with prejudice. Count VI of the third amended complaint was dismissed without prejudice, and appellants were again granted leave to amend consistent with directions by the trial judge.

Moreover, the trial judge ordered appellants to replead in a fourth amended complaint "in compliance with Rule 1,110," those counts previously found to allege a valid cause of action.

On July 19, 1994, appellants filed their fourth amended complaint which contained seven counts in 155 separately-numbered paragraphs and thirty-six pages. Counts I II, III and VI of this fourth amended complaint alleged the same causes of action as Counts I, III, V and XI of the second amended complaint and Counts I, II, IV and XII of the third amended complaint, which had previously been held to adequately state valid causes of action. The second trial judge, on the basis of Oldsmar's motion to dismiss, entered an order that dismissed with prejudice appellants' entire fourth amended complaint. In doing so, the judge found as follows:

> This Court, by Order dated June 17, 1994, granted part of the City of Oldsmar's Motion to Dismiss the Third Amended Complaint and directed Plaintiffs to comply with Rule 1.110(b), Fla.R.Civ.P., in filing a

> Fourth Amended Complaint. In defiance of this Court's Order, the Plaintiffs' Fourth Amended Complaint not only fails to comply with Rule 1.110(b), but has repled counts which were dismissed by the Court with prejudice in the June 17, 1994 Order. Moreover, the Plaintiffs, amended complaint has raised new causes of action without leave of court. Based upon the Plaintiffs' continued noncompliance or disregard with the Orders of this Court, the court finds involuntary dismissal of this action is warranted.

While we are not unmindful of the trial Judge's justifiable frustration at the failure of appellants to more properly plead in accordance with the Rules of Civil Procedure, we conclude that dismissal with prejudice is too severe a sanction in regard to those counts of appellants' complaint that twice previously were found to adequately state valid

causes of action. Appellants were both pro se. While appellant Rood is a lawyer previously admitted to practice law in Florida, appellant McLaughlin is not educated in the law. Our supreme court in *Wilson v. Lee Memorial Hospital* 65 So.2d 40, 41, (Fla. 1953), held in this regard as follows:

> It is well to require the complaint to state a cause of action, but that done, it should never be overthrown by technical impediments that do not go to the merits of the cause. Whether the technical impediment be a rule or statute is not material. It is certain that the makers of the Constitution did not intend that one injured in "lands, goods, person or reputation" be deprived of a right of action.

We, therefore, reverse the dismissal with prejudice of Counts I, II, III and VI of appellants' fourth amended complaint (Counts I, III, V and XI

of the second amended complaint and Counts I, II, IV and XIII of the third amended complaint). We otherwise affirm the dismissal of appellants' fourth amended complaint.

Affirmed in part, reversed in part and remanded.

DANAHY, A.C.J., AND SCHOONOVER, JJ. Concur

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

E. B. ROOD, and R. BRUCE McLAUGHLIN,

Plaintiffs,

vs.

Case No. 92-3764-CI-07

THE CITY OLDSMAR, a Florida municipal corporation, THOMAS PINTA and NICK STASZKO, in their individual and personal capacities, and ERIC AGER,

Defendants.

_____/

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS THIRD AMENDED COMPLAINT

THIS CAUSE having come before the Court

upon the Defendant City of Oldsmar's ("Oldsmar") motion to Dismiss the Plaintiffs' Third Amended Complaint, with prejudice, and the Court having heard the arguments of the Plaintiffs, pro se and of counsel for the Defendant, and having reviewed the aforementioned motion along with the memoranda of law and supporting authority submitted to the Court, and being otherwise fully advised in the premises, finds as follows:

1. In ruling an the instant motion, the Court recognizes that "[tlhe purpose of a motion to dismiss is to ascertain whether a plaintiff has alleged a good cause of action and the court must confine itself strictly to the four corners of the complaint." *N.E. at West Palm Beach, Inc. v. Morowitz*, 471 So.2d 570, 570-72 (Fla. 3rd DCA 1985). "It is appropriate to consider defendants' affirmative defenses, or the sufficiency of the evidence which the plaintiff is likely to produce." *Id.* at 571.

2. Previously, by Order dated August 6, 1993, this Court found that the Plaintiffs had adequately stated a cause of action with regard to Counts I, II, IV and XII (Counts I, III, V and XI of the second Amended complaint). Accordingly, this Court shall deny Defendant's motion to dismiss these counts.

3. Count III of the Third Amended Complaint fails to state a cause of action for equitable relief based upon the original Development Agreement executed by the parties. Specifically, Count III contains four (4) fatal repugnancies, one of which was disallowed by this Court's previous February, 1993 Order, and yet again, for a second time, by this Court's August 6, 1993, Order.

As was previously observed by this Court in its earlier Order Granting Motion to Dismiss Amended Complaint, and this Court's August 6, 1993, Order, Count III (Count IV of the Second Amended Complaint) "demonstrates an impermissible inconsistency between the allegations contained therein and the written terms of the Development Agreement." The impermissible inconsistency between the allegations contained in the Third Amended complaint and the written terms of the Development Agreement not only remain, but are further amplified. In the Plaintiffs' Third Amended Complaint they have, for the first time, included the site plan exhibit which was originally attached to the 1988 Development Agreement. By including the missing exhibit to the 1988 contract the irrevocable nature of the fatal repugnancy is

augmented. In particular, the inclusion of the Site Plan Exhibit to the 1988 Development Agreement reveals a proposed collector road running through the project. Nowhere is there any reference to the Site Plan Exhibit to Duane Avenue. The Site Plan makes no reference whatsoever to Duane Avenue. It only refers to a generic and unnamed road, not even designated as a collector road, running through the Site Plan.

The Plaintiffs' repeated disregard of this Court's previous two orders alone require dismissal with prejudice, notwithstanding the three (3) further repugnancies contained in Count III of the Third Amended Complaint.

This aside, the repugnancy between complaint and exhibit negates the cause of action and requires dismissal. See *Franz Tractor Co. v. J.I. Case Co.*, 566 So.2d 524 (Fla. 2nd DCA 1990), in which the court held:

> Any exhibit attached to a pleading is a part of the pleading for all purposes, and if an attached document negates a pleader's cause of action, the plain language of the

> document will control and may be the basis of a motion to dismiss. *Id.* at 526.

The First District Court of Appeal held likewise in *Striton Properties v. The City of Jacksonville Beach*, 533 So.2d 1174 (FI. lst DCA 1988).

Since there is no provision in the 1988 Development Agreement, nor its exhibits, which requires as a condition precedent the designation of Duane Avenue as a collector road, Plaintiffs have failed to state a cause of action for termination of the 1988 Development Agreement as set out in Count III and its companion Count VIII of the Third Amended Complaint.

In addition, a further impermissible inconsistency between the allegations contained in the Third Amended Complaint and the written terms of the Development Agreement exists in the present pleadings. The 1986 Development Agreement, at paragraph 6, provides for the automatic termination if "the land use designation . . . contemplated by this agreement [are not] placed on the property." The complaint then alleges that Duane Avenue was not

designated as a collector road. A review of the 1990 Contract reveals that the term "property" is defined in the contract to mean only the property owned by E. B. Rood and Keith R. Collen (and now Collen's successor, Bruce McLaughlin). Because Duane Avenue is not Plaintiffs, property, and because the termination provisions of the Development Agreement apply only to Plaintiffs' property, the refusal to designate Duane Avenue as a collector road by Pinellas County cannot trigger the termination provisions of the Development Agreement. In addition to the reasons set forth earlier, based upon this repugnancy, Count III and VIII are dismissed With prejudice.

4. Count V and Count X of the Third Amended Complaint are barred by the statute of limitations. Section 95.11(3)(p), Florida Statutes, requires that "[a]ny action not specifically provided for in these statutes" must be commenced within four (4) years. The complaint reveals that the ordinance under attack was adopted over 13 years ago, in December 1980. Accordingly, Counts V and X of the Third Amended complaint are time-barred and must be dismissed with prejudice.

5. Count VI of the Third Amended Complaint

(like Count VI of the second Amended Complaint) fails to state a Cause of action for rescission. Previously, this Court, in its August 6, 1993, Order dismissed Count VI of the Second Amended Complaint and provided Plaintiffs an opportunity to amend to state a cause of action. Despite Plaintiffs' continued failure to state a cause of action, the Court shall provide Plaintiffs an additional opportunity In which to do so. Accordingly, the Court shall grant the Defendant's motion to dismiss Count VI of the Third Amended Complaint but without prejudice.

6. As this Court ruled in its August 6, 1993, Order of Dismissal, the Plaintiffs' counts for duress (Counts II and VII of the Second Amended Complaint) failed to plead sufficient allegations of ultimate fact to show duress. As noted by the Court, to support such a claim, "it must be shown: (a) that the act sought to be set aside was affected involuntarily and thus not as an exercise of free choice or will and (b) that this condition of mind was caused by some improper and coercive conduct of the opposite side." *City of Miami v. Kory*, 394 So.2d 494, 497 (Fla. 3rd DCA 1981), *rev, denied*, 407 So.2d 1104 (Fla. 1981). Inasmuch as the allegations for duress contained in the Plaintiffs'

Second Amended Complaint (Count II and VII), remain virtually unchanged in the Plaintiffs' Third Amended Complaint (Count VII), with the exception of additional conclusions, assumptions and speculative statements of fact, this Court's prior determination shall not change.

Based upon the reason set forth above, and the Court otherwise finding merit in Defendant's remaining arguments that Count VII warrants dismissal, Count VII of the Third Amended C Complaint shall be dismissed with prejudice.

7. As with many of the Plaintiffs' other counts, the Court finds Count IX of the Third Amended Complaint (as it did with Count IX of the Second Amended Complaint) fails to state a cause of action due to a repugnancy existing between the pleadings and the attached exhibits. Therefore, Count IX shall be dismissed with prejudice.

By the execution of the 1988 Development Agreement (Exhibit G), the Plaintiffs stipulated that

> The current land use plan and zoning districts are reasonable and appropriate for application to the property upon fulfillment of the Owners'

> obligations under this Development Agreement.

The Plaintiffs also concede that the Comprehensive Plan designations that they now challenge applied to the 1988 Contract. This means that the "current land use plan and zoning districts" approved by the Plaintiffs in the 1986 Development Agreement are precisely those attacked by plaintiffs in their complaint.

Further, Plaintiffs acquired the land with actual or constructive notice of the land's Comprehensive Plan designations. As stated by the Third District Court of Appeal in *Namon v. State Department of Environmental Regulation*, 558 So.2d 504 (Fla. 3rd DCA 1990), *rev. denied*, 564 So.2d 1086 (Fla. 1990):

> Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. *Id.* at 505.

Under the authorities cited above, and even assuming that the Comprehensive Plan designations

worked a taking, the existence of the designations prior to the Plaintiffs' purchase of the land precludes the Plaintiffs from stating a cause of action.

Finally, by the execution of the 1988 Development Agreement and of the 1990 Amendment thereto the Plaintiffs became bound by the statute that requires development agreements to be consistent with the City's Comprehensive Plan:

> Consistency with the comprehensive plan and land development regulations. -- A development agreement and authorized development shall be consistent with the local government's comprehensive plan and land development regulations. Section 163.3231, Florida Statutes (1987).

Plaintiffs' execution of the development agreement bound them to this statute both by operation of this statute and by operation of the common-law rule that "the law existing at the time and place of making a contract forms part of the contract as if it had been incorporated into it."

Franz Tractor Co. v. J.I. Case Co., 566 So.2d 524, 526 (Fla. 2nd DCA 1990).

Likewise, all purchasers of land take with constructive notice of all applicable laws, such as the statute requiring development consistent with the City's Comprehensive Plan. *Namon.*

For the foregoing reasons, Plaintiffs are precluded from stating a taking cause of action. Accordingly, Count IX shall dismissed with prejudice.

8. As this Court found in its August 6, 1993, order, the present Count XI of the Third Amended Complaint (Count X of the Second Amended Complaint) fails to state a cause of action for delay pursuant to 42 U.S.C., Section 1983, in that a proper basis for this court's jurisdiction over such a cause of notion has not been properly alleged. Based upon the Plaintiffs, failure to replead this count in compliance with this Court's previous Order, and the Court once again finding that Count XI fails to state a cause of action, the Court shall dismiss this count, with prejudice.

9. On the whole, the court finds the Plaintiffs, complaint inordinately long, complicated and replete with legal conclusion, assumptions and speculative

statements of fact. Moreover, the complaint is replete with contradictions, repugnancies and redundancies while containing textbook phrases of zoning with broad allusions to law that are on the whole deficient. The Court recognizes that courts encourage parties to replead and replead unless to do so would be contrary to the ends of justice. Here, the Court finds it would not be contrary to the ends of justice. In fact, justice demands that the Plaintiffs, in their Fourth Amended Complaint, replead the valid causes of action in compliance with Rule 1.110, Florida Rules of Civil Procedure, which requires a concise, plain statement of facts.

Accordingly, it is

ORDERED AND ADJUDGED that:

1. The Defendant's Motion to Dismiss Counts I, II, IV and XII of the Third Amended Complaint are [*sic*] hereby DENIED.

2. The Defendant's Motion to Dismiss Counts III, V, VII, VIII, IX, X and XI of the Third Amended Complaint are [*sic*] hereby GRANTED and those Counts Are DISMISSED with prejudice.

3. The Defendant's Motion to Dismiss Count VI of the Third Amended complaint is hereby GRANTED without prejudice. The Plaintiffs shall have twenty (20) days within which to file a Fourth Amended Complaint consistent with this Court's findings above. Moreover, the Plaintiffs' Fourth Amended Complaint shall replead the valid causes of action in compliance with Rule 1.110, Florida Rules of Civil Procedure, which requires a concise, plain statement of facts.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida, this ___ day of June, 1994.

RICHARD A. LUCE
Circuit Judge

cc: Bryan A. Kutchins, Esquire
E. B. Rood
R. Bruce McLaughlin
Eric Ager

ORIGINAL SIGNED

June 17 1994

RICHARD A. LUCE
CIRCUIT JUDGE

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

E. B. ROOD, and R. BRUCE McLAUGHLIN,

Plaintiffs,

vs.

Case No. 92-3764-CI-07

THE CITY OLDSMAR, a Florida municipal corporation, THOMAS PINTA and NICK STASZKO, in their individual and personal capacities, and ERIC AGER,

Defendants.

_____/

ORDER GRANTING MOTION FOR EXTENSION OF TIME TO FILE RESPONSIVE PLEADINGS AND MOTION FOR INVOLUNTARY DISMISSAL

THIS CAUSE having come before the Court

on the Defendant's, City Of Oldsmar's, Motion for Involuntary Dismissal pursuant to Rule 1.420(b), Fla.R.Civ.P., Continued Motion to Extend Time for Responsive Pleadings to Plaintiff's Fourth Amended Complaint and Motion to Strike Counts IV, VII and VIII of Plaintiff's Fourth Amended Complaint, and the Court having considered same as well as the memoranda and argument of counsel, finds that:

This Court, by Order dated June 17, 1994, granted part of the City of Oldsmar's Motion to Dismiss the Third Amended Complaint and directed Plaintiffs to comply with Rule 1.110(b), Fla.R.Civ.P., in filing a Fourth Amended Complaint. In defiance of this Court's order, the Plaintiffs' Fourth Amended Complaint not only fails to comply with Rule 1.110(b), but has repled counts which were dismissed by the Court with prejudice in the June 17, 1994 Order. Moreover, the Plaintiffs' amended complaint has raised new causes of action without leave of court. Based upon the Plaintiffs' continued noncompliance or disregard with the Orders of this Court, the Court finds involuntary dismissal of this action is warranted.

Accordingly, it is

ORDERED AND ADJUDGED that:

1. The Defendant's Continued Motion to Extend Time for Responsive Pleadings to Plaintiff to Fourth Amended Complaint is hereby GRANTED.

2. The Defendant's Notion for Involuntary Dismissal is hereby GRANTED and the above-styled cause is hereby DISMISSED with prejudice. The remaining motion is moot.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida, this ____ day of October, 1994.

RICHARD A. LUCE
Circuit Judge

cc: Bryan A. Kutchins, Esquire
E. B. Rood
R. Bruce McLaughlin
Eric Ager

ORIGINAL SIGNED

OCT 19 1994

RICHARD A. LUCE
CIRCUIT JUDGE

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA, CIVIL DIVISION

E. B. ROOD and R. BRUCE McLAUGHLIN,
Plaintiffs

v. Case No. 92-92-3764 CI 16

THE CITY OF OLDSMAR, a Florida Municipal Corporation, THOMAS PINTA and NICK STASZKO, in their individual and personal capacities, and ERIC AGER
Defendants

_____/

THIRD AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, FOR RECISION OF CONTRACT,

AND FOR DAMAGES

DEMAND FOR A JURY TRIAL

Plaintiffs E. B. ROOD (hereinafter "ROOD") and R. BRUCE McLAUGHLIN (hereinafter "McLAUGHLIN") sue Defendants the CITY OF OLDSMAR (hereinafter "OLDSMAR"), THOMAS PINTA (hereinafter "PINTA"), NICK STASZKO (hereinafter "STASZKO"), and ERIC AGER (hereinafter "AGER"), and for their Complaint allege as follows:

A. INTRODUCTION

I. JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to § 26.012(2)(a), Florida Statutes. This is, in part, an action for damages in excess of $15,000, exclusive of interest, costs and attorneys' fees.

2. The jurisdiction of this Court is invoked pursuant to § 86.011, Florida Statutes, which authorizes Circuit Courts to enter declaratory judgments within their monetary jurisdictional limits.

3. The jurisdiction of this Court is also invoked pursuant to § 26.012 (3), F.S., which authorizes Circuit Courts to issue injunctions. This equitable remedy, is the normal companion remedy to a Declaratory Judgment and is sought for the

purpose of enforcing the Declaratory Judgments sought herein.

4. The jurisdiction of this Court is also invoked pursuant the Fifth and Fourteenth Amendments to the Constitution of the United States, to 42 U.S.C. § 1983, and to 28 U.S.C. §1343(a)(3).

5. This Court has concurrent jurisdiction with the United States District Court under 42 U.S.C. § 1983 and 28 U.S.C. § 1343 pursuant to *Howlett v. Rose*, 110 S.Ct. 2430 (1990).

6. This is a cause of action arising under the Fifth and Fourteenth Amendments to the Constitution of the United States as enforced through 42 U.S.C. § 1983. Plaintiffs allege that Defendants, acting under color of state law, deprived Plaintiffs of rights, privileges and immunities guaranteed by the Constitution of the United States. This Court has jurisdiction over actions under 42 U.S.C. § 1983 as set out in ¶¶ 4 and 5, *supra.*

7. With respect to Part B, *infra*, Declaratory Judgment against Ager, and with respect to Part C, *infra*, Declaratory and Injunctive Relief against OLDSMAR, Plaintiffs assert that their positions espoused in this Complaint are legally

sound and supported by fact and law. The Defendants' actions, however, have created a *bona fide* controversy between the parties. Plaintiffs require, therefore, a declaratory judgment declaring their rights, privileges and immunities.

8. In particular, McLAUGHLIN not being a party to any of the preceding transactions with OLDSMAR, requires a Declaratory Judgment setting forth his rights, obligations and privileges related to:

a) The governing law re. the payment of sewage impact fees;

b) The status of the Original Development Agreement and the Amended Development Agreement which OLDSMAR alleges apply to McLAUGHLIN's real property;

c) The validity and applicability of the Future Land Use Element of the City of OLDSMAR Comprehensive Plan, as it existed in 1982, to McLAUGHLIN's real property.

9. With respect to Part B, *infra*, Declaratory Judgment against Ager, and with respect

to Part C, *infra*, Declaratory and Injunctive Relief against OLDSMAR, Plaintiffs have no adequate remedy at law.

10. With respect to Part C, *infra*, Declaratory and Injunctive Relief against OLDSMAR, Plaintiffs, will suffer irreparable harm if Defendants are allowed to continue their conduct sought to be enjoined herein.

II. THE PARTIES

11. Plaintiff, E. B. ROOD is the owner of that certain parcel of real property located within the corporate limits of Defendant, the CITY OF OLDSMAR and more particularly described on Exhibit A, attached hereto and made a part hereof by reference. ROOD has been the owner of said property at all material times.

12. Plaintiff McLAUGHLIN is the owner of that certain parcel of real property located within the corporate limits of Defendant, the CITY OF OLDSMAR and more particularly described on Exhibit B, attached hereto and made a part hereof by reference. McLAUGHLIN is the successor by foreclosure to KEITH R. COLLEN (hereinafter "COLLEN").

13. Defendant, OLDSMAR is a Florida Municipal Corporation.

14. All actions of Defendant OLDSMAR complained of herein were actions under color of state law, and were official policy, custom and usage of OLDSMAR in violation of immunities, rights and privileges guaranteed to Plaintiffs by the Constitution and Laws of the United States and of the State of Florida.

15. The actions of Defendant OLDSMAR were further a part of a pattern of misconduct as demonstrated in this Complaint and by the actions of Defendant towards other Developers, which pattern of misconduct is the official policy and custom of the City. This pattern, custom and usage further has deprived, and is continuing to deprive, Plaintiffs of Constitutionally protected rights under the Fifth and Fourteenth Amendments to the Constitution of the United States.

16. The pattern of misconduct, official policy, custom and usage of Defendant OLDSMAR was the direct and proximate cause of the damages suffered by Plaintiffs as set out *infra*.

17. Defendant PINTA was at all material times a member of the City Council of the CITY OF

OLDSMAR and is sued in his individual and personal capacities.

18. Defendant STASZKO was at all material times the Planning Director of the CITY OF OLDSMAR and is sued in his individual and personal capacities

19. Defendant AGER is a Consultant to ROOD and COLLEN who asserts a claim against ROOD and COLLEN related to issues herein.

20. Pursuant to the requirements of § 86.091, Florida Statutes, a copy of this Third Amended Complaint is also being served on the Honorable Bernie McCabe, State Attorney, Sixth Judicial Circuit, 5100 144th Avenue North, Clearwater, Fl., 34620, who is entitled to be heard in this matter.

III. GENERAL ALLEGATIONS

III.A. HISTORICAL BACKGROUND

21. ROOD purchased his property, (comprising approximately 100 acres) in 1982.

22. McLAUGHLIN's predecessor in title, COLLEN, purchased his property, (comprising approximately 35 acres), in 1982.

23. McLAUGHLIN acquired COLLEN's

former property through the foreclosure of a mechanic's lien recorded in the Public Records of Pinellas County, Florida.

24. Previously, COLLEN had attempted to sell his property to ROOD by means of a deed executed on October 17, 1990 and recorded on August 15, 1991 in Official Records Book 7653, Page 274, Public Records of Pinellas County, Florida.

25. However, the transaction from COLLEN to ROOD was barred by McLAUGHLIN's Notice of *Lis Pendens*, recorded on March 8, 1990 in Official Records Book 7219, Page 304, Public Records of Pinellas County, Florida.

26. Accordingly, McLAUGHLIN has good and marketable title to the property described on Exhibit B.

27. At the time of ROOD's purchase of the property described on Exhibit A, said property was zoned C-2, General Commercial (approximately 15 acres along the S.R. 584 frontage) and R.P.D. 7.5, Residential Planned Development, 7.5 units per acre (approximately 85 acres in the South part of the property).

28. At the time of ROOD's purchase of the

property described on Exhibit A, said property was designated Urban Low Density Residential in the purported OLDSMAR Comprehensive Plan.

29. At the time of COLLEN's purchase of the property described on Exhibit B, said property was zoned C-2, General Commercial (approximately 8 acres along the S.R. 584 frontage) and R.P.D. 7.5, Residential Planned Development, 7.5 units per acre (approximately 27 acres in the South part of the property).

30. At the time of COLLEN's purchase of the property described on Exhibit B, said property was designated Open Space in the purported OLDSMAR Comprehensive Plan.

31. When McLAUGHLIN first obtained a judgment against COLLEN, and had the Pinellas County Sheriff levy against COLLEN's property to satisfy that judgment, John Pinta, son of Defendant THOMAS PINTA, appeared at the Sheriff's sale with the announced intention of bidding for the property. However, McLAUGHLIN elected to postpone the sale and no bids were taken.

32. When McLAUGHLIN secured a judgment on his Mechanic's Lien, and foreclosed said lien, John Pinta, son of Defendant THOMAS

PINTA, appeared at the Clerk's sale and bid for the property.

33. In the latter part of the negotiations with OLDSMAR, beginning in approximately June, 1990, (and just after McLAUGHLIN commenced his action against COLLEN,) Defendant PINTA, as a Member of the City Council, became intransigent as to ROOD's development proposals and led the City in obstructing and delaying the reasonable development of Plaintiffs' property.

III.B. DEVELOPMENT OVERTURES

34. Beginning in 1985, ROOD attempted to develop his property in accordance with the OLDSMAR Zoning Ordinance.

35. In particular, ROOD made application to OLDSMAR for the issuance of site development approvals and Building Permits for a Shopping Center of approximately 150,000 square feet to be located on the 15 acres of ROOD's property zoned C-2.

36. ROOD's application for site development approval and Building Permits was denied by OLDSMAR because the proposed use was inconsistent with the Comprehensive Plan

designation of Urban Low Density Residential.

37. Contemporaneously with ROOD's applications to OLDSMAR, McLAUGHLIN's predecessor COLLEN also made enquiries of the City with respect to the development of his property in accordance with OLDSMAR's Zoning Ordinance.

38. After ROOD's applications for approval of the proposed Shopping Center were denied by OLDSMAR, ROOD retained McLAUGHLIN to determine if an amendment to the OLDSMAR Comprehensive Plan could be obtained.

III.C. THE COMPREHENSIVE PLAN DESIGNATIONS

39. Until December 16, 1980, OLDSMAR had no Comprehensive Plan.

40. However, On October 10, 1972 OLDSMAR adopted its Zoning Ordinance which placed the ROOD and COLLEN/McLAUGHLIN properties in the C-2 and R.P.D. 7.5 Zoning Districts.

41. In December, 1980, in an effort to comply with the mandates of Chapter 163, Florida Statutes, 1979, OLDSMAR purportedly adopted its Comprehensive Plan.

42. The actual *OLDSMAR Comprehensive* Plan (and its Future Land Use Element) were not attached to Ordinance 80-12 which purportedly adopted the Comprehensive Plan.

43. The Future Land Use Map of the OLDSMAR Comprehensive Plan, at least with respect to Plaintiffs' properties, was copied verbatim from the Comprehensive Land Use Plan of the Pinellas County Planning Council (P.P.C.).

44. The P.P.C. was subsequently found to have improperly adopted its Comprehensive Plan and to be an unconstitutional body.

45. The P.P.C. designations of Urban Low Density Residential on ROOD's property and Open Space on the COLLEN/McLAUGHLIN property did not take into account the adjacent arterial road, State Road (S.R.) 584, the commercial development along S.R. 584, and the industrial development to the North of the Plaintiffs' properties, across S.R. 584.

46. Accordingly, the P.P.C. Comprehensive Plan designations, adopted in the OLDSMAR Comprehensive Plan, along the frontage of the ROOD and COLLEN/ McLAUGHLIN properties were arbitrary and capricious, not rationally related to the legitimate exercise of the police power, and

worked a taking of all economically beneficial use of the property. The designations also destroyed the reasonable, investment-backed expectations of ROOD, COLLEN and McLAUGHLIN.

47. The Open Space designation on the COLLEN/McLAUGHLIN prohibited all economically beneficial use of all the property, was arbitrary and capricious, not rationally related to the legitimate exercise of the police power, and worked a taking of all beneficial use of the property. The designation also destroyed the owners' reasonable, investment-backed expectations.

48. In contrast to the invalid, unconstitutional, arbitrary and capricious designations of the P.P.C. Comprehensive Plan, mimicked by the OLDSMAR Comprehensive Plan, the Zoning Districts (C-2 and R.P.D. 7.5) established by the OLDSMAR Zoning Ordinance were carefully and precisely established, in response to the particular circumstances of the sites, and were appropriate for the land.

III.D. THE SEWAGE CAPACITY SALE

49. At the time ROOD was making his application to OLDSMAR for approval of the

proposed Shopping Center, OLDSMAR had a significant shortage of capacity in its Sewage Treatment Plant, and had no funds available to cure said shortage.

50. At that time, connections to the OLDSMAR sewage system, and sewer impact fees were governed by OLDSMAR **Ordinance** 85-37, Exhibit C, attached hereto and made a part hereof by reference.

51. On May 20, 1986, OLDSMAR adopted **Resolution** 86-14, (Exhibit D, attached hereto and made a part hereof by reference,) establishing a method by which sewage capacity would be sold, sewer impact fees pre-paid, and funding for an expansion to the Sewage Treatment Plant thereby obtained.

52. Thereafter, after objecting to the Sewage Capacity Sale (*e.g.*, Exhibit E, attached hereto and made a part hereof by reference) and continuing his efforts to develop his property in accordance with the OLDSMAR Zoning Ordinance, ROOD, under duress, paid to OLDSMAR the sum of $715,000 in accordance with the requirements of Resolution 86-14.

53. ROOD's duress had as its direct and

proximate cause, the following unlawful actions of Defendant OLDSMAR:

a) The imposition of the designations of an unlawful and arbitrary and capricious Comprehensive Plan designation on ROOD's real property;

b) The unlawful rejection of ROOD's development proposals based on the unlawful Comprehensive Plan; and

c) The unlawful amendment by Defendant OLDSMAR of Ordinance 85-37 by Resolution 86-14;

as a result of which ROOD acted involuntarily and was unable to exercise his free choice or will, all as a direct result of the improper and coercive actions of Defendant OLDSMAR.

54. Therefore, ROOD was not a free agent when he entered into the alleged contract (Exhibit F, attached hereto and made a part hereof by reference).

55. ROOD's payment to OLDSMAR was made pursuant to a contract, (Exhibit F,) purportedly authorized by Resolution 86-14.

56. The sum of $715,000 was calculated for ROOD by McLAUGHLIN and others, based on the sewage generated by development in accordance with the Zoning Ordinance.

57. In the sale of sewage capacity, OLDSMAR hoped to sell all (except for a reservation for "small projects", not applicable to ROOD or McLAUGHLIN's properties) of the capacity of the proposed expansion of the Sewage Treatment Plant which, if the sale of all capacity had occurred, would have prevented any major development in OLDSMAR, except by those who had purchased sewage capacity, for the foreseeable future.

58. ROOD purchased sewage capacity because OLDSMAR had already placed so many obstacles in the path of his proposed development, that if all of the sewage capacity were sold in the sale, the additional delay in the development of his property would have destroyed all value of his property.

III.E. THE DEVELOPMENT AGREEMENT

59. After ROOD pre-purchased sewage capacity, based on his then existing Zoning Districts

of C-2 and R.P.D. 7.5, and while ROOD and COLLEN were continuing their discussions with OLDSMAR with respect to amending OLDSMAR's alleged Comprehensive Plan to make it consistent with the Zoning Ordinance, OLDSMAR, through its City Manager, Bruce Haddock (hereinafter "HADDOCK") suggested to ROOD and COLLEN that they combine their respective properties into a single development.

60. After preliminary, individual negotiations, ROOD, COLLEN and OLDSMAR agreed that combining the two properties and developing them as a single entity was worth further exploration.

61. Negotiations amongst the parties continued from the summer of 1986 until May, 1987.

62. Concurrently with these negotiations, OLDSMAR enacted Ordinance 86-41, providing for the use of Development Agreements pursuant to § 163.3220, Florida Statutes 1987.

63. Also during these negotiations, Defendant AGER offered his services to ROOD, COLLEN and McLAUGHLIN as an advisor with respect to negotiations with the members of the

OLDSMAR City Council.

64. AGER was to be compensated a reasonable amount, to be determined by the parties, if a Development Agreement were approved and consummated.

65. After extensive negotiations amongst the parties, the terms and conditions of a Development Agreement were agreed upon by the parties and ratified by the City Council on May 5, 1987. The Development Agreement is found as Exhibit G, attached hereto and made a part hereof by reference.[1]

66. The Development Agreement required ROOD and COLLEN to, *inter alia*, by way of example and not limitation:

a) construct a connector road joining Duane Avenue in unincorporated Pinellas County,

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[1] Pursuant to O.R. Book 6830, Page 913, this Exhibit is attached as it is found in the Public Records of Pinellas County, except that a small scale version of Exhibit C to the Original Development Agreement is also attached, to show the correlation between the Collector Road identified in the agreement and Duane Avenue as it presently exists. Exhibit C to the Development Agreement is the Site Plan incorporated into the Agreement, and reproduced here with annotations to distinguish the ROOD and McLAUGHLIN properties, and to establish the dimensions between Moccasin Creek and Duane Avenue. For ease of reference, Exhibit C to the Development Agreement (Exhibit G hereto,) will hereafter be referred to as the "Site Plan".

South of the railroad track forming the South boundary of ROOD's property, with S.R. 584 which forms the North boundary of ROOD's property; (See Site Plan);

b) contribute $335,000 for the construction of a water storage tank;

c) contribute $14,000 for the rehabilitation of Mapleleaf Boulevard; and

d) construct and deed to OLDSMAR an eighteen hole executive golf course.

67. The Development Agreement required OLDSMAR to, *inter alia*, by way of example and not limitation:

a) amend its Comprehensive Plan and Zoning Ordinance to permit the development contemplated by the Development Agreement;

b) apply to the Pinellas County Planning Council for approval of the land use and road

designations required to permit the contemplated development; and

c) provide water and sewer service to the development.

III.F. THE PINELLAS COUNTY PLANNING COUNCIL

68. Amongst the terms and conditions of the Development Agreement was the requirement that an amendment to the P.P.C. Comprehensive Plan be obtained to establish the designations proposed by OLDSMAR, ROOD and COLLEN.

69. On or about June 17, 1987, OLDSMAR, in accordance with the terms and conditions of the Development Agreement, applied for an Amendment to the development land use designations of the P.P.C. Comprehensive Plan, but not for the collector road land use designation required by the Development Agreement.

70. On July 15, 1987, the P.P.C. failed to approve the Comprehensive Plan Amendment requested by OLDSMAR, ROOD and COLLEN.

71. Thereafter, on August 14, 1987, OLDSMAR, ROOD and COLLEN filed a Petition

for a Writ of Certiorari in the Pinellas County Circuit Court.

72. Contemporaneous with, or prior to, the events described in ¶¶ 68 - 70, *supra*, two other Developers had sued the P.P.C., [2] alleging, *inter alia*, that the P.P.C. had failed to properly adopt its Comprehensive Plan and that the P.P.C. was an unconstitutional body.

73. The Petition for a Writ of Certiorari filed by ROOD, COLLEN and OLDSMAR was transferred to the Honorable Thomas Penick, Circuit Judge, before whom the *Brantly* and *Fourth Street Holding Company* cases were pending. The ROOD/COLLEN/OLDSMAR Petition was then abated pending the outcome of the previously filed cases.

74. Judge Penick, initially ruled, in the *Brantly* case, in September, 1987, that the P.P.C. had improperly adopted its Comprehensive Plan. Subsequently, in January and April, 1988, Judge

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[2] *City of Safety Harbor and Wilbur Brantly v. The Pinellas County Planning Council*, unpublished, Pinellas County Circuit Court Case 86-9550-15, September, 1987, amended January, 1988; *St. Petersburg Fourth Street Holding Company v. Pinellas County Planning Council*, unpublished, Pinellas County Circuit Court, April, 1988; appeals dismissed, 528 So.2d 1194 (Fla. 2d DCA, 1988).

Penick further ruled in *Brantly* that the P.P.C. as then established, was an unconstitutional body and repeated these rulings in the *Fourth Street Holding Company* case.

75. The P.P.C. then took an appeal from Judge Penick's orders.

76. During the pendency of the Appeal, the Florida Legislature adopted a new Special Act of Local Application re-establishing the P.P.C. with alleged corrections to the provisions of the original Act which were held to be unconstitutional.

77. On the new Special Act becoming law, the P.P.C. dismissed its appeal of Judge Penick's rulings, and the ROOD/ COLLEN/OLDSMAR action against the P.P.C. was also ultimately dismissed.

78. When the new P.P.C. Comprehensive Plan was adopted in accordance with the new Act, the land use of the subject property was designated in accordance with the Development Agreement between OLDSMAR, ROOD and COLLEN, except for the designation of Duane Avenue as a Collector Road in the Transportation Element of the P.P.C. Plan.

III.G. DUANE AVENUE

79. One requirement of the Development Agreement was that ROOD and COLLEN build a collector road (the Duane Avenue extension) through ROOD's property. {Exhibit G, ¶ 12(a)(1). Site Plan.}

80. Although the text of the Original Development Agreement refers primarily to a collector road, by the Site Plan it cannot be disputed that the Collector Road described by the Agreement is the existing Duane Avenue and its extension Northward through ROOD's property to S.R. 584. The Site Plan shows the collector road, to which reference is made in ¶¶ 12.(a)(1) and 12(a)(2) of Exhibit G, as being the Northerly extension of Duane Avenue, and no other interpretation of the fact that the Collector Road and Duane Avenue are one and the same is possible. [3]

81. This collector road would have joined

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[3] See also Exhibits O and P, attached hereto and made a part hereof by reference, the Executive Summary of a Planning Feasibility Study and a Transportation Analysis, respectively, both of which demonstrate conclusively that the parties intended the Collector Road to be the Northerly extension of Duane Avenue. These documents were prepared during the negotiations with
OLDSMAR, were presented in draft form to the City Council on May 5, 1987, and were refined for use at the P.P.C.

S.R. 584 to the North of subject properties with Duane Avenue, which dead ends across a railroad track adjacent to ROOD's property, and thus connect via Duane Avenue to S.R. 580.

82. A condition precedent to constructing the Duane Avenue extension as a collector road required that the road be designated as a collector in the Traffic Circulation Elements of the OLDSMAR and Pinellas County Comprehensive Plans, and on the Pinellas County Metropolitan Planning Organization (M.P.O.) Plan, the last of which is adopted as the Transportation Element of the P.P.C. Plan.

83. The M.P.O. Plan is adopted as a part of the P.P.C. Plan, (Exhibit H, attached hereto and made a part hereof by reference). Exhibit H, affirmed the previous practice of the P.P.C. described in ¶¶ 84 - 87, *infra*.

84. ROOD, through McLAUGHLIN, and OLDSMAR through its then Assistant City Manager Lou Draughon, appeared before the Pinellas County Board of County Commissioners in its Capacity as the Countywide Planning Authority when it adopted the P.P.C. Plan on January 17, 1989 to repeat the request that Duane Avenue be placed in the collector

road designation in the Transportation Element of the P.P.C. Comprehensive Plan.

85. When the Board of County Commissioners in its Capacity as the Countywide Planning Authority, refused to incorporate the collector road designation for Duane Avenue in the re-adoption of the P.P.C. Comprehensive Plan, ROOD and OLDSMAR filed a Petition and Request for Hearing with the Florida Department of Community Affairs. (Exhibit I, attached hereto and made a part hereof by reference.)

86. Said Petition, by both ROOD and OLDSMAR, in, *inter alia*, ¶ 23 (p. 5), speaks to the "designation" of Duane Avenue as a collector road.

87. Therefore, in addition to the requirement that the P.P.C. Future Land Use Plan reflect the designations established in the Development Agreement, the Agreement also required the P.P.C. Comprehensive Plan to adopt and incorporate the Duane Avenue collector designation.

88. However, on June 23, 1989, the M.P.O. refused to amend its Plan, and thus the P.P.C. Plan, to designate Duane Avenue as a collector road.

89. Thus, a designation on the P.P.C. Plan, required by the Development Agreement, has not

been obtained, thereby rendering the Development Agreement automatically terminated and therefore void.

III.H. THE DEVELOPMENT AGREEMENT STATUS

90. Paragraph 6 of the Agreement provides:

> "... In the event that the legally authorized reviews, as finally adjudicated by a Court of Law or an Administrative Hearing, by the Pinellas Planning Council, ... precludes the land use designations ... contemplated by this Agreement from being placed on the property, then this Agreement shall automatically terminate at the time of such preclusion and the parties shall cooperate to return each other to their respective positions prior to the date

of this Agreement.

91. The designation of Duane Avenue as a collector road in the P.P.C. Plan, which was a *de jure* and a *de facto* [4] condition precedent of the Development Agreement, has not been placed on ROOD's property as contemplated by the Development Agreement.

92. Accordingly, the designation of Duane Avenue as a collector road in the P.P.C. Comprehensive Plan was rejected by or on behalf of the P.P.C. on three occasions:

a) When the Board of County Commissioners refused to amend the P.P.C. Comprehensive Plan on January 31, 1989;

b) When the Florida Department of Community Affairs refused to consider the Petition of ROOD and OLDSMAR; and

c) When the M.P.O. refused to amend its Plan, as incorporated into the P.P.C. Comprehensive Plan.

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[4] See Site Plan and Exhibit G, ¶ 12(a)(1).

93. Accordingly, upon the decision of the M.P.O. (dealing with the joint P.P.C./M.P.O. Plan,) not to designate Duane Avenue as a collector road, (June 23, 1989), the Development Agreement automatically terminated and the parties were required to restore each other to their pre-agreement positions.

94. Notwithstanding the requirement of ¶ 6, that the Development Agreement automatically terminate upon the preclusion of its fulfillment by the P.P.C., ROOD and OLDSMAR sought to negotiate different solutions to the problems of the proposed development created by OLDSMAR's planning controls which existed prior to the adoption of the Development Agreement.

95. The negotiations towards a new solution to the problems posed by OLDSMAR for the development of Plaintiffs' properties involved only ROOD and OLDSMAR, and did not include COLLEN, COLLEN's attorney, or McLAUGHLIN.

96. ROOD and OLDSMAR ultimately found a new solution but were unable to secure the approval of that solution by COLLEN, see, *e.g.*, Exhibit J, attached hereto and made a part hereof by reference.

97. On March 20, 1990 OLDSMAR executed an amendment to the Development Agreement, which was executed by ROOD on May 23, 1990 (Exhibit K, attached hereto and made a part hereof by reference).

98. OLDSMAR recorded the original Development Agreement in the Public Records of Pinellas County, and, on August 9, 1991, recorded the unsigned amendment in the Pinellas County Public Records, in Official Records Book 7648, Page 1914.

99. Further, efforts to secure developers/purchasers to undertake the development of the property or to find lenders to finance such development have been unsuccessful.

100. Because Defendants, subsequent to the automatic termination of the original Development Agreement, have failed and refused to approve any plan for the economically beneficial development of Plaintiffs' property, the property has not been marketable to developers or lenders, even though ROOD has, since approximately June 1990, negotiated in good faith with Defendants OLDSMAR and STASZKO to reach agreement on an actual amendment to the Agreement that would be

marketable.

101. In the course of these efforts, ROOD has expended considerable time, money and effort.

102. Although ROOD has consistently sought to reach agreement on an actual amendment to the marketable site plan approved in the original Development Agreement, Defendants, OLDSMAR, PINTA and STASZKO, have delayed and obfuscated the process, and have failed and refused to approve workable, mutually beneficial plans that represent sound and marketable urban design, consistency with the Comprehensive Plan, and good development.

103. The actions of OLDSMAR, STASZKO and PINTA complained of herein include, by way of example and not limitation:

a) Refusal of STASZKO to allow the Florida Department of Transportation to exercise its lawful jurisdiction with respect to driveway permits on S.R. 584;

b) Rejection of the best plans for the development on, *inter alia*, the following dates:

i) August 18, 1992;

ii) February 18, 1992; and

iii) March 5, 1991.

c) Or the approval of site plans but with such numerous and onerous conditions (approximately 15 in number) that the changes required were arbitrary and capricious and therefore took all economically beneficial use of Plaintiffs' property;

d) Imposition of development requirements which made the development cost prohibitive;

e) causing enumerable, unwarranted delays in processing development plans;

f) requiring that the golf course part of the development be fully constructed and operating prior to the construction and occupancy of other parts of the development.

thereby acting arbitrarily and capriciously and taking from Plaintiffs all economically beneficial use of their property, and destroying Plaintiffs' reasonable investment-backed expectations.

104. The parties, ROOD, McLAUGHLIN, as successor to COLLEN, and OLDSMAR, have not reached agreement on amendments to the original Development Agreement and thus are bound by the original Development Agreement, which is the only agreement amongst them, but which was automatically terminated when the Pinellas County Planning Council refused to include the designation of Duane Avenue as a collector road on its Comprehensive Plan.

105. Thus, fulfillment of the terms and conditions of the original Development Agreement has been precluded by the refusal of the P.P.C. to amend its Plan to designate Duane Avenue as a collector road.

106. Further proof of the inability of the parties to fulfill the original Development Agreement is found in the execution, by OLDSMAR, of an amendment to the original agreement.

107. Therefore, the original Development Agreement is automatically terminated, and the parties are required to restore each other to their pre-agreement positions.

108. ROOD and McLAUGHLIN have declared the Development Agreement to be

terminated and have requested a refund of funds paid pursuant to the Agreement and that the parties otherwise restore each other to their pre-agreement positions. (Exhibit L, attached hereto and made a part hereof by reference.)

109. OLDSMAR has refused to refund the monies at issue to ROOD. (Exhibit M, attached hereto and made a part hereof by reference.)

110. On the completion of this action, Plaintiffs expect that this Honorable Court will declare the Original Development Agreement and the Amended Development Agreement to be null and void. Plaintiffs further expect that the Comprehensive Plan designations applicable to their properties will also be quashed, leaving a final development approval pursuant to the 1982 Zoning Districts applicable to the property.

B. DECLARATORY JUDGMENT AGAINST AGER

111. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 110, *supra*, inclusive, as if fully set out herein.

112. This is an action for Declaratory Judgment pursuant to Chapter 86, Florida Statutes.

113. Defendant AGER asserts a claim against ROOD and against McLAUGHLIN's real property for his services related to the original Development Agreement.

114. ROOD and McLAUGHLIN's predecessor, COLLEN, agreed to compensate AGER for his services if two conditions precedent were met:

a) That agreement were reached between ROOD, COLLEN and OLDSMAR; and

b) That the agreement were actually consummated by the development of the ROOD and McLAUGHLIN properties in accordance with the Agreement.

115. The first condition precedent has been fulfilled, but the second condition precedent, the consummation of the agreement, has not and cannot be fulfilled.

116. Plaintiffs herein do not challenge AGER's claims against COLLEN or AGER's claims related to services performed in the physical maintenance of COLLEN's property.

117. A dispute exists between Plaintiffs

ROOD and McLAUGHLIN and Defendant AGER with respect to the obligation, if any, of Plaintiffs to AGER.

118. Plaintiffs ROOD and McLAUGHLIN are in doubt as to their obligations, if any, to Defendant AGER.

WHEREFORE, Plaintiffs demand judgment against Defendant AGER, as follows:

a) A judgment by the Court determining Plaintiff's obligations, if any, to Defendant AGER with respect to his services related to the original Development Agreement, and declaring that Plaintiffs ROOD and McLAUGHLIN have no obligation to Defendant AGER for services performed related to the original Development Agreement.

b) A judgment awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

C. DECLARATORY AND INJUNCTIVE RELIEF AGAINST DEFENDANT OLDSMAR

COUNT I

SEWAGE CAPACITY SALE UNLAWFUL AMENDMENT OF AN ORDINANCE

119. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 110, *supra*, inclusive, as if fully set out herein.

120. This is an action for Declaratory Relief pursuant to Chapter 86, Florida Statutes.

121. This is also an action for Injunctive Relief pursuant to § 26.012 (3), F.S.

122. Prior to the adoption of Resolution 86-14 the purchase and allocation of sewage capacity in OLDSMAR was governed by Ordinance 85-37.

123. Resolution 86-14 amended Ordinance 85-37.

124. Under Florida law, an Ordinance may not be amended except by another Ordinance. In particular, an Ordinance may not be amended by a resolution.

125. Although Resolution 86-14, on its face, alleges its consistency with Ordinance 85-37, the Resolution is, in fact, inconsistent, and is a *de facto*

and *de jure* amendment to the Ordinance in the following substantial and material ways:

a) Ordinance 85-37 provides for the payment of impact fees at times certain in the building process; Resolution 86-14 requires the payment of impact fees at 12:00 noon on June 27, 1986;

b) As an alternative to the payment of impact fees during the building process, Ordinance 85-37, itself, provides a mechanism for an advance reservation of sewage capacity, with payments made pursuant thereto being refundable; Resolution 86-14 provides that reservation fees are non-refundable;

c) Ordinance 85-37 makes no provision for the availability of water and sewer service to "small" projects; Resolution 86-14 sets aside 25% of the City's available water and sewer capacity for "small projects";

d) Ordinance 85-37 provides that sewage capacity reserved may be used anywhere in the City's sewer service area; Resolution 86-14 limits the use of reserved capacity to property precisely defined in the reservation.

126. Therefore, and notwithstanding the allegation on the face of Resolution 86-14 that it is consistent with Ordinance 85-37, the Resolution is inconsistent and actually and unlawfully amends the Ordinance, and, thus there is no repugnancy between this Complaint and Exhibit D. Therefore, Resolution 86-14 must be declared null and void.

127. A dispute exists between Plaintiffs ROOD and McLAUGHLIN and Defendant OLDSMAR with respect to the validity of Resolution 86-14.

128. Plaintiffs ROOD and McLAUGHLIN are in doubt as to their obligations, pursuant to Resolution 86-14.

129. McLAUGHLIN, not having been a party to any of the previous transactions related to Ordinance 85-37 and Resolution 86-14, is in extreme doubt about his rights, privileges, immunities and

obligations pursuant to these legislative acts of OLDSMAR.

WHEREFORE, Plaintiffs demand judgment against Defendant OLDSMAR, as follows:

a) Entering a judgment by the Court declaring that Defendant OLDSMAR improperly attempted to amend Ordinance 85-37 by Resolution 86-14, and that OLDSMAR Resolution 86-14 is null and void *ab initio*, and without any force or effect whatsoever;

b) Entering a prohibitory injunction prohibiting Defendant OLDSMAR and all others acting on behalf of, in privity with, or in conjunction with OLDSMAR from enforcing or attempting to enforce the provisions of Resolution 86-14;

c) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

COUNT II
THE DEVELOPMENT AGREEMENT AMENDMENT

130. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 110, *supra*, inclusive, as if fully set out herein.

131. This is an action for Declaratory Relief pursuant to Chapter 86, Florida Statutes.

132. This is also an action for Injunctive Relief pursuant to § 26.012 (3), F.S.

133. Only one Development Agreement, without amendment, exists between Plaintiffs ROOD and McLAUGHLIN and Defendant OLDSMAR.

134. Instead of agreeing to the automatic termination of the original Development Agreement (as set out in Count III, *infra*), OLDSMAR is attempting to enforce a purported amendment to the Development Agreement which was executed by ROOD and OLDSMAR but which was never executed on behalf of McLAUGHLIN's predecessor COLLEN and which does not bind McLAUGHLIN.

135. Further, the Development Agreement Amendment was established in the course of the following chronology:

a) **March 8, 1990**, McLaughlin begins action against Collen, Case No. 90-4133, *Lis Pendens* filed, O.R. Book 7219, Page 304;

b) **March 20, 1990**, "Amended" Development Agreement executed by City;

c) **May 23, 1990**, "Amended" Development Agreement executed by ROOD;

d) **October 17, 1990**, Collen executes deed of his property to ROOD;

e) **August 9, 1991**, Oldsmar records "Amended" Development Agreement;

f) **August 15, 1991**, ROOD records deed.

g) **May 22, 1992**, Supplemental Final Judgment entered in McLaughlin v. Collen; ¶ 13 provides:

> On filing of the Certificate of Title, the Defendant, KEITH R. COLLEN and all persons claiming under or against said Defendant since the filing of McLAUGHLIN's Notice of Lis Pendens, shall be foreclosed of all estate or claim in the real property hereinbefore described ..." (Exhibit N, attached hereto

and made a part hereof by reference.)

136. Therefore, both the Development Agreement Amendment and COLLEN's deed to ROOD are foreclosed by the final judgment for McLAUGHLIN and his previous Notice of *Lis Pendens*.

137. Thus, at law and in equity, the Development Agreement Amendment is a nullity.

138. A dispute exists between Plaintiffs ROOD and McLAUGHLIN and Defendant OLDSMAR with respect to the status of the Development Agreement Amendment and with respect to the obligations of the parties thereunder.

139. Plaintiffs ROOD and McLAUGHLIN are in doubt as to their obligations, pursuant to the Development Agreement Amendment.

WHEREFORE, Plaintiffs demand judgment against Defendant OLDSMAR, as follows:

a) Entering a judgment by the Court declaring that the Development Agreement Amendment has been foreclosed by McLAUGHLIN's foreclosure of COLLEN's property and is therefore a nullity;

b) Entering a judgment by the Court declaring that the controlling Development Agreement between Plaintiffs ROOD and McLAUGHLIN and Defendant OLDSMAR is the original agreement, recorded in Official Records Book 6825, Page 1563, and re-recorded in Official Records Book 6830, Page 897, Public Records of Pinellas County, Florida and that there is no valid and binding amendment to said agreement;

c) Entering a prohibitory injunction prohibiting Defendant OLDSMAR and all others acting on behalf of, in privity with, or in conjunction with OLDSMAR from enforcing or attempting to enforce the provisions of any Development Agreement Amendment applicable to ROOD and McLAUGHLIN's properties;

d) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

COUNT III
THE ORIGINAL DEVELOPMENT AGREEMENT

140. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 110, *supra*, inclusive, as if fully set out herein.

141. This is an action for Declaratory Relief pursuant to Chapter 86, Florida Statutes.

142. This is also an action for Injunctive Relief pursuant to § 26.012 (3), F.S.

143. Only one Development Agreement, without amendment, exists between Plaintiffs ROOD and McLAUGHLIN and Defendant OLDSMAR.

144. That Development Agreement (Exhibit G) requires, as a condition precedent, that Duane Avenue be constructed as a collector road linking the existing Duane Avenue with State Road (S.R.) 584.

145. Although the text of the Original Development Agreement refers primarily to a collector road, by reference to the Site Plan, it cannot be disputed that the Collector Road described by the Agreement is the existing Duane Avenue and its extension Northward through ROOD's property to S.R. 584.

146. The Site Plan shows the collector road, to which reference is made in ¶¶ 12.(a)(1) and 12(a)(2) of Exhibit G, as being the Northerly extension of Duane Avenue, and no other interpretation of the fact that the Collector Road and Duane Avenue are one and the same is possible.

147. In particular, the Site Plan shows the

Collector Road entering the South limits of ROOD's property, approximately 600 feet West of where Moccasin Creek crosses under the railroad right-of-way. Similarly, the Plat of West Oldsmar, (Exhibit Q, attached hereto and made a part hereof by reference,) shows Duane Avenue (actually extended onto ROOD's property) at approximately 600 feet West of the intersection of Moccasin Creek and the railroad right-of-way. Therefore, there can be no dispute that Duane Avenue as it presently exists, and "The Collector Road" contemplated by the original Development Agreement, are one and the same.

148. Further, the purported Development Agreement Amendment (Exhibit K, at pp. 4 - 5) deletes the requirement of the original agreement with respect to the collector road, which is further proof that the prohibition of the extension of Duane Avenue and the Collector Road are one and the same.

149. Exhibits O hereto, the Executive Summary of a Planning Feasibility Study, and P, a Transportation Analysis, respectively, both demonstrate conclusively that the parties intended the Collector Road to be the Northerly extension of Duane Avenue.

150. Exhibit Q, is an excerpt of the Plat Map of West Oldsmar as maintained in the Official Records of Pinellas County which shows the present Northern terminus of Duane Avenue, with sufficient dimensions shown thereon to show that the collector road designated on the Site Plan was intended to be the Northerly extension of Duane Avenue.

151. In order to lawfully build, operate and maintain Duane Avenue as a collector road between S.R. 580 and S.R. 584, it must be designated as a collector road on the Pinellas County Metropolitan Planning Organization (M.P.O.) Plan, as it is incorporated into the Pinellas County Planning Council Comprehensive Plan.

152. The parties acknowledged this requirement, and Defendant OLDSMAR joined with ROOD, COLLEN and McLAUGHLIN in applications to the P.P.C. to so designate Duane Avenue and its Northerly extension through ROOD's property as a collector road in the Transportation Element of the P.P.C. Comprehensive Plan.

153. The P.P.C., on its own, and through the vehicle of the M.P.O. has refused to amend its Comprehensive Plan to designate Duane Avenue and its Northerly extension through ROOD's property (or

any other collector road joining S.R. 580 with S.R. 584) as a collector road as contemplated in Exhibit G hereto, particularly the Site Plan thereto.

154. Because the P.P.C. merely adopts the M.P.O. Plan as a part of the P.P.C. Comprehensive Plan, the M.P.O. is the final authority on the designation of Duane Avenue and its Northerly extension as a collector road, which designation was required to fulfill the original Development Agreement.

155. By their joint application for an amendment to the M.P.O. Plan, as it is incorporated into the P.P.C. Comprehensive Plan, Plaintiff ROOD, COLLEN as predecessor to Plaintiff McLAUGHLIN, and Defendant OLDSMAR have exhausted their administrative remedies.

156. ROOD challenged the Constitutionality of the P.P.C. as re-established in 1988, in a Federal Complaint, which was dismissed, and Plaintiffs have also exhausted their judicial and legal remedies with respect to the designation of Duane Avenue and its Northerly extension through ROOD's property as a collector road in the M.P.O. Plan as incorporated into the P.P.C. Comprehensive Plan.

157. Therefore, absent a valid amendment to

the original Development Agreement, that agreement is automatically terminated.

158. The Development Agreement further provides that if the designation in the P.P.C. Plan is not obtained, and development as contemplated by the Agreement thus precluded, the Agreement automatically terminates at the time of the preclusion and the parties are to cooperate to restore each other to their pre-agreement positions.

159. ROOD and McLAUGHLIN have declared the Development Agreement to be automatically terminated (Exhibit L), and have demanded that OLDSMAR restore them to their pre-agreement positions, including the return to ROOD of $349,000 paid to OLDSMAR pursuant to the Agreement.

160. OLDSMAR has failed and refused to consider the Development Agreement to be automatically terminated, and has failed and refused to return to ROOD the $349,000 paid pursuant to the original Agreement. (Exhibit M.)

161. A dispute exists between Plaintiffs ROOD and McLAUGHLIN and Defendant OLDSMAR with respect to the status of the Development Agreement and with respect to the

obligations of the parties thereunder.

162. Plaintiffs ROOD and McLAUGHLIN are in doubt as to their obligations, pursuant to the Development Agreement.

WHEREFORE, Plaintiffs demand judgment against Defendant OLDSMAR, as follows:

a) Entering a judgment by the Court declaring that fulfillment of the original Development Agreement is precluded by the refusal of the Pinellas County Planning Council to designate Duane Avenue as a collector road (or, in the alternative, to designate any collector road on the ROOD/McLAUGHLIN properties to join S.R. 580 with S.R. 584) on its Comprehensive Plan and that the Development Agreement is therefore automatically terminated and that the parties are to be restored to their pre-agreement positions;

b) Entering a judgment making the following declaration: that the parties are bound by the original Development Agreement recorded in Official Records Book 6825, Page 1563, and re-recorded in Official Records Book 6830, Page 897, Public Records of Pinellas County, Florida, and that the fulfillment of said agreement has been precluded

by the actions of the Pinellas County Planning Council and that the agreement is therefore automatically terminated;

c) Entering a prohibitory injunction prohibiting Defendant OLDSMAR and all others acting on behalf of, in privity with, or in conjunction with OLDSMAR from enforcing or attempting to enforce the provisions of any Development Agreement applicable to ROOD and McLAUGHLIN's properties;

d) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

COUNT IV
THE COMPREHENSIVE PLAN DESIGNATIONS

163. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 110, *supra*, inclusive, as if fully set out herein.

164. This is an action for Declaratory Relief pursuant to Chapter 86, Florida Statutes.

165. This is also an action for Mandatory and Prohibitory Injunctions pursuant to § 26.012 (3), F.S.

166. Prior to the adoption by OLDSMAR of its Comprehensive Plan, Plaintiffs' property was

governed solely by the OLDSMAR Zoning Ordinance.

167. The OLDSMAR Zoning Ordinance zoned ROOD's property Residential Planned Development 7.5 units per acre on the Southern approximately 85 acres; and General Commercial on the Northern approximately 15 acres, adjacent to S.R. 584.

168. The OLDSMAR Zoning Ordinance zoned McLAUGHLIN's property Residential Planned Development 7.5 units per acre on the Southern approximately 27 acres; and General Commercial on the Northern approximately 8 acres, adjacent to S.R. 584.

169. Plaintiff ROOD and McLAUGHLIN's predecessor COLLEN, purchased their property based on its reasonable Zoning Districts, without reference to the Comprehensive Plan.

170. When OLDSMAR was required by Chapter 163, Florida Statutes 1979 to adopt a Comprehensive Plan, it elected to simply but unlawfully mimic the Future Land Use designations of the Pinellas County Planning Council Comprehensive Plan.

171. The P.P.C. was subsequently declared to

be unconstitutional and to have improperly adopted its Comprehensive Plan.

172. The designations of ROOD and McLAUGHLIN's properties in the P.P.C. Plan, mimicked in the OLDSMAR Comprehensive Plan, are arbitrary and capricious, not rationally related to a legitimate public purpose, work a taking of all economically beneficial use of Plaintiffs' property, and destroy Plaintiffs' reasonable investment backed expectations.

173. Arbitrary and capricious land use regulations are unconstitutional in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

174. As the parties are required to restore each other to their pre-Development Agreement positions, these designations will again apply to Plaintiffs' properties.

175. In contrast, the Zoning Districts applicable to Plaintiffs' property were carefully established by OLDSMAR after thorough study of the area and the properties, are reasonable and appropriate, and permit economically beneficial use of ROOD and McLAUGHLIN's properties.

176. McLAUGHLIN has never conceded that

the original Comprehensive Plan designations applicable to Plaintiffs' real property were reasonable and appropriate.

177. ROOD's alleged admission that the land use designations on his property were reasonable and appropriate is immaterial because the same alleged admission also stated that the conflicting Zoning Districts governing ROOD's land were reasonable and appropriate.

178. The only marketable site plans available to Plaintiffs are those pursuant to the 1985 Zoning Districts and that attached to the now void original Development Agreement.

179. ROOD having applied unsuccessfully for Comprehensive Plan Amendments in 1985, Plaintiffs have exhausted their administrative remedies.

180. Further, any future efforts to resolve the Comprehensive Plan by pursuing administrative remedies with Defendant OLDSMAR would patently be futile, and thus these alleged remedies need not be pursued. Further, the proposed site plans rejected by OLDSMAR as described in ¶ 103 b), *supra*, required amendments to the Comprehensive Plan, and thus Plaintiffs have also exhausted these alleged

administrative remedies.

181. A dispute exists between Plaintiffs ROOD and McLAUGHLIN and Defendant OLDSMAR with respect to the application of the Pinellas County Planning Council Comprehensive Plan, as mimicked in the OLDSMAR Comprehensive Plan, to Plaintiffs' lands.

182. Plaintiffs ROOD and McLAUGHLIN are in doubt as to their obligations, pursuant to the OLDSMAR Comprehensive Plan.

WHEREFORE, Plaintiffs demand judgment against Defendant OLDSMAR, as follows:

a) Entering a judgment by the Court declaring that the OLDSMAR Comprehensive Plan unlawfully mimicked the invalid Pinellas County Planning Council Comprehensive Plan, and that the designations of the Comprehensive Plan applicable to Plaintiffs' properties are arbitrary and capricious, without a rational relationship to the legitimate exercise of the police power, and work a taking of all economically beneficial use of Plaintiffs' property;

b) Entering a judgment by the Court declaring that the Zoning Districts previously

established by OLDSMAR on Plaintiffs' property are correct and reasonable, and should govern in place of the Comprehensive Plan designations;

c) Entering a prohibitory injunction prohibiting Defendant OLDSMAR and all others acting on behalf of, in privity with, or in conjunction with OLDSMAR from enforcing or attempting to enforce the provisions of the OLDSMAR Comprehensive Plan with respect to ROOD and McLAUGHLIN's properties;

d) Entering a mandatory injunction requiring Defendant OLDSMAR to amend its Comprehensive Plan to make it consistent with the Zoning Districts applicable to Plaintiffs' properties, and to vigorously seek the approval of this amendment from all agencies with jurisdiction;

e) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

COUNT V
FAILURE TO ATTACH COMPREHENSIVE PLAN TO ORDINANCE

183. Plaintiffs re-allege and incorporate herein ¶¶ 1 through 110, *supra*, as if fully set out herein.

184. By Ordinance 80-12, Defendant, City of OLDSMAR, purported to adopt a Comprehensive Plan pursuant to Chapter 163, Florida Statutes, 1979.

185. Said Comprehensive Plan was enforced against Plaintiff ROOD, and against McLAUGHLIN's predecessor in title, COLLEN, and damaged their reasonable investment-backed expectations.

186. Section 1 of Ordinance 80-12 states: "That the **attached** Land Use Element of the Oldsmar Comprehensive Plan is hereby adopted, ..." [Emphasis added].

187. No Land Use Element of the Comprehensive Plan is attached to Ordinance 80-12, and no cross-reference to such an Element kept or maintained elsewhere is found in the Ordinance or elsewhere in the City's Official Records.

188. City Staff have expressed uncertainty as to the official status, or lack thereof, of the document enforced as the Land Use Element of the Comprehensive Plan.

189. The failure of Defendant to attach or otherwise cross-reference the element, makes that portion of the Comprehensive Plan null and void *ab initio*.

190. A dispute exists between Plaintiffs ROOD and McLAUGHLIN and Defendant OLDSMAR with respect to the application of the OLDSMAR Comprehensive Plan which is not attached to Ordinance 80-12, to Plaintiffs' lands.

191. Plaintiffs ROOD and McLAUGHLIN are in doubt as to their obligations, pursuant to the OLDSMAR Comprehensive Plan.

WHEREFORE, Plaintiffs demand judgment against Defendant OLDSMAR, as follows:

a) Entering a judgment by the Court declaring that the OLDSMAR Comprehensive Plan is unlawful and null and void *ab initio* for failure of the City to attach the Land Use Element of the Comprehensive Plan to Ordinance 80-12;

b) Entering a judgment by the Court declaring that the Zoning Districts previously established by OLDSMAR on Plaintiffs' property are correct and reasonable, and should govern in place of the Comprehensive Plan designations;

c) Entering a prohibitory injunction prohibiting Defendant OLDSMAR and all others acting on behalf of, in privity with, or in conjunction with OLDSMAR from enforcing or attempting to

enforce the provisions of the OLDSMAR Comprehensive Plan with respect to ROOD and McLAUGHLIN's properties;

d) Entering a mandatory injunction requiring Defendant OLDSMAR to amend its Comprehensive Plan to make it consistent with the Zoning Districts applicable to Plaintiffs' properties, and to vigorously seek the approval of this amendment from all agencies with jurisdiction;

e) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

D. COMPLAINT FOR RECISION OF CONTRACT
COUNT VI
SEWAGE CAPACITY SALE UNLAWFUL RESOLUTION

192. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 110, *supra*, inclusive, as if fully set out herein.

193. This is an action for recision of contract, which contract is found as Exhibit F hereto.

194. Prior to the adoption of Resolution 86-14 the purchase and allocation of sewage capacity in OLDSMAR was governed by Ordinance 85-37.

195. Resolution 86-14 purported to amend Ordinance 85-37.

196. Under Florida law, an Ordinance may not be amended except by another Ordinance. In particular, an Ordinance may not be amended by a resolution.

197. Although Resolution 86-14 alleges, on its face, its consistency with Ordinance 85-37, the Resolution is, in fact, inconsistent, and is a *de facto* and *de jure* amendment to the Ordinance in the following substantial and material ways:

a) Ordinance 85-37 provides for the payment of impact fees at times certain in the building process; Resolution 86-14 requires the payment of impact fees at 12:00 noon on June 27, 1986;

b) As an alternative to the payment of impact fees during the building process, Ordinance 85-37, itself, provides a mechanism for an advance reservation of sewage capacity, with payments made pursuant thereto being refundable; Resolution 86-14

provides that reservation fees are non-refundable;

c) Ordinance 85-37 makes no provision for the availability of water and sewer service to "small" projects; Resolution 86-14 sets aside 25% of the City's available water and sewer capacity for "small projects";

d) Ordinance 85-37 provides that sewage capacity reserved may be used anywhere in the City's sewer service area; Resolution 86-14 limits the use of reserved capacity to property precisely defined in the reservation.

198. Therefore, and notwithstanding the allegation on the face of Resolution 86-14 that it is consistent with Ordinance 85-37, the Resolution is inconsistent and actually and unlawfully amends the Ordinance, and, thus there is no repugnancy between this Complaint and Exhibit D. Therefore, Resolution 86-14 must be declared null and void.

199. In the procedures used by Defendant OLDSMAR in the sewage capacity sale, OLDSMAR

knowingly and unlawfully entered into a contract (Exhibit F hereto) with ROOD, with said contract being provided for and set forth in Resolution 86-14, which unlawfully amended Ordinance 85-37.

200. As a contract authorized by unlawful means, the contract between ROOD and OLDSMAR for the purchase of sewage treatment capacity is null and void *ab initio*, and must therefore be rescinded and OLDSMAR be required to return to ROOD the $715,000 which ROOD paid to OLDSMAR pursuant to the contract.

201. ROOD has demanded cancellation of the contract and refund of the funds paid pursuant thereto, but OLDSMAR has refused to cancel the contract and refund the monies paid pursuant thereto.

202. Plaintiffs have no adequate remedy at law because Plaintiff is presently required to leave with OLDSMAR funds which OLDSMAR obtained illegally and is not entitled to keep.

WHEREFORE, Plaintiffs demand judgment against Defendant OLDSMAR, as follows:

a) Entering an Order by this Court rescinding the contract (Exhibit F) between ROOD and OLDSMAR and compelling OLDSMAR to

return to ROOD the $715,000 which he paid pursuant to Exhibit F, together with pre-judgment interest, and declaring that ROOD has not pre-purchased sewage capacity.

b) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

COUNT VII
SEWAGE CAPACITY SALE
DURESS

203. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 110, *supra*, inclusive, as if fully set out herein.

204. This is an action for recision of contract, (Exhibit F).

205. Pursuant to the alleged requirements of Resolution 86-14, ROOD entered into a contract for the purchase of sewage capacity in OLDSMAR.

206. ROOD's purchase of sewage capacity pursuant to Resolution 86-14 was made under duress, with ROOD being unable to exercise free agency, for the following reasons.

207. ROOD's duress had as its direct and proximate cause, the following unlawful actions of Defendant OLDSMAR:

a) The imposition of the designations of an unlawful and arbitrary and capricious Comprehensive Plan designation on ROOD's real property;

b) The unlawful rejection of ROOD's development proposals based on the unlawful Comprehensive Plan; and

c) The unlawful amendment by Defendant OLDSMAR of Ordinance 85-37 by Resolution 86-14;

as a result of which ROOD acted involuntarily and was unable to exercise his free choice or will, all as a direct result of the improper and coercive actions of Defendant OLDSMAR.

208. Therefore, ROOD was not a free agent when he entered into the alleged contract (Exhibit F).

209. Because the contract (Exhibit F,) between ROOD and OLDSMAR was entered under duress, and was promulgated as the result of the unlawful conduct of Defendant OLDSMAR, there is no independent obligation for ROOD to honor the

contract.

210. In the procedures used by Defendant OLDSMAR in the sewage capacity sale, OLDSMAR knowingly and unlawfully, by placing ROOD under duress and depriving him of his free agency, entered into an unlawful contract (Exhibit F hereto) with ROOD, as a direct result of the duress imposed on ROOD.

211. As a contract obtained only under duress, the contract between ROOD and OLDSMAR for the purchase of sewage treatment capacity is null and void *ab initio*, and must therefore be rescinded and OLDSMAR be required to return to ROOD the $715,000 which ROOD paid to OLDSMAR pursuant to the contract.

212. ROOD has demanded cancellation of the contract and refund of the funds paid pursuant thereto, but OLDSMAR has refused to cancel the contract and refund the monies paid pursuant thereto.

213. Plaintiffs have no adequate remedy at law because Plaintiff is presently required to leave with OLDSMAR funds which OLDSMAR obtained illegally and is not entitled to keep.

WHEREFORE, Plaintiffs demand judgment

against Defendant OLDSMAR, as follows:

a) Entering an Order by this Court rescinding the contract (Exhibit F) between ROOD and OLDSMAR and compelling OLDSMAR to return to ROOD the $715,000 which he paid pursuant to Exhibit F, together with pre-judgment interest, and declaring that ROOD has not pre-purchased sewage capacity.

b) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

A jury trial is demanded for this Count.

E. COMPLAINT FOR DAMAGES

COUNT VIII

REFUSAL TO TERMINATE DEVELOPMENT AGREEMENT AND REFUND FEES

214. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 110, *supra*, inclusive as if fully set out herein.

215. Only one Development Agreement, without amendment, exists between Plaintiffs ROOD and McLAUGHLIN and Defendant OLDSMAR.

216. Instead of agreeing to the automatic termination of the original Development Agreement (as set out in Count III, *supra*), OLDSMAR is

attempting to enforce a purported amendment to the Development Agreement which was executed by ROOD and OLDSMAR but which was never executed on behalf of McLAUGHLIN's predecessor COLLEN and which does not bind McLAUGHLIN.

217. Further, the Development Agreement Amendment was established in the course of the following chronology:

a) **March 8, 1990**, McLaughlin begins action against Collen, Case No. 90-4133, *Lis Pendens* filed, O.R. Book 7219, Page 304;

b) **March 20, 1990**, "Amended" Development Agreement executed by City;

c) **May 23, 1990**, "Amended" Development Agreement executed by ROOD;

d) **October 17, 1990**, Collen executes deed of his property to ROOD;

e) **August 9, 1991**, Oldsmar records "Amended" Development Agreement;

f) **August 15, 1991**, ROOD records

deed.

g) **May 22, 1992**, Supplemental Final Judgment entered in McLaughlin v. Collen; ¶ 13 provides:

> On filing of the Certificate of Title, the Defendant, KEITH R. COLLEN and all persons claiming under or against said Defendant since the filing of McLAUGHLIN's Notice of Lis Pendens, shall be foreclosed of all estate or claim in the real property hereinbefore described ..." (Exhibit N).

218. Therefore, both the Development Agreement Amendment and COLLEN's deed to ROOD are foreclosed by the final judgment for McLAUGHLIN and his previous Notice of *Lis Pendens*.

219. Thus, at law and in equity, the Development Agreement Amendment is a nullity.

220. The Original Development Agreement (Exhibit G) requires, as a condition precedent, that Duane Avenue be constructed as a collector road

linking the existing Duane Avenue with State Road (S.R.) 584.

221. Although the text of the Original Development Agreement refers primarily to a collector road, by The Site Plan it cannot be disputed that the Collector Road described by the Agreement is the existing Duane Avenue and its extension Northward through ROOD's property to S.R. 584.

222. The Site Plan shows the collector road, to which reference is made in ¶¶ 12.(a)(1) and 12(a)(2) of Exhibit G, as being the Northerly extension of Duane Avenue, and no other interpretation of the fact that the Collector Road and Duane Avenue are one and the same is possible.

223. In particular, the Site Plan shows the Collector Road entering the South limits of ROOD's property, approximately 600 feet West of where Moccasin Creek crosses under the railroad right-of-way. Similarly, the Plat of West Oldsmar, (Exhibit Q,) shows Duane Avenue (actually extended onto ROOD's property) at approximately 600 feet West of the intersection of Moccasin Creek and the railroad right-of-way. Therefore, there can be no dispute that Duane Avenue as it presently exists, and "The Collector Road" contemplated by the original

Development Agreement, are one and the same.

224. Further, the purported Development Agreement Amendment (Exhibit K, at pp. 4 - 5) deletes the requirement of the original agreement with respect to the collector road, which is further proof that the prohibition of the extension of Duane Avenue and the Collector Road are one and the same.

225. Exhibits O hereto, the Executive Summary of a Planning Feasibility Study, and P, a Transportation Analysis, respectively, both demonstrate conclusively that the parties intended the Collector Road to be the Northerly extension of Duane Avenue.

226. Exhibit Q, is an excerpt of the Plat Map of West Oldsmar as maintained in the Official Records of Pinellas County which shows the present Northern terminus of Duane Avenue, with sufficient dimensions shown thereon to show that the collector road designated on the Site Plan was intended to be the Northerly extension of Duane Avenue.

227. In order to lawfully build, operate and maintain Duane Avenue as a collector road between S.R. 580 and S.R. 584, it must be designated as a collector road on the Pinellas County Metropolitan

Planning Organization (M.P.O.) Plan, as it is incorporated into the Pinellas County Planning Council Comprehensive Plan.

228. The parties acknowledged this requirement, and Defendant OLDSMAR joined with ROOD, COLLEN and McLAUGHLIN in applications to the P.P.C. to so designate Duane Avenue.

229. Because the P.P.C. merely adopts the M.P.O. Plan as a part of the P.P.C. Comprehensive Plan, the M.P.O. is the final authority on the designation of Duane Avenue as a collector road, which designation was required to fulfill the original Development Agreement.

230. By their joint application for an amendment to the M.P.O. Plan, as it is incorporated into the P.P.C. Comprehensive Plan, Plaintiff ROOD, COLLEN as predecessor to Plaintiff McLAUGHLIN, and Defendant OLDSMAR have exhausted their administrative remedies.

231. By ROOD's challenge to the Constitutionality of the P.P.C. as re-established in 1988, Plaintiffs have also exhausted their judicial and legal remedies with respect to the designation of Duane Avenue as a collector road in the M.P.O. Plan

as incorporated into the P.P.C. Comprehensive Plan.

232. Therefore, absent a valid amendment to the original Development Agreement, that agreement is automatically terminated.

233. The Development Agreement further provides that if the designation in the P.P.C. Plan is not obtained, and development as contemplated by the Agreement thus precluded, the Agreement automatically terminates at the time of the preclusion and the parties are to cooperate to restore each other to their pre-agreement positions.

234. ROOD and McLAUGHLIN have declared the Development Agreement to be automatically terminated (Exhibit L), and have demanded that OLDSMAR restore them to their pre-agreement positions, including the return to ROOD of $349,000 paid to OLDSMAR pursuant to the Agreement.

235. OLDSMAR has failed and refused to consider the Development Agreement to be automatically terminated, and has failed and refused to return to ROOD the $349,000 paid pursuant to the original Agreement. (Exhibit M.)

236. In its refusal to accept the automatic termination of the original Development Agreement,

and to refund to ROOD the $349,000 he paid pursuant to that Agreement, OLDSMAR knowingly and unlawfully obtained and used the property of ROOD with the intent to unlawfully deprive ROOD of his property and the benefits therefrom and appropriate that property to its own use, in open and notorious violation of the law, and damaged ROOD thereby.

237. ROOD has been damaged by the actions of OLDSMAR in that he has been unlawfully deprived of the use of his $349,000, the interest therefrom, and the costs of securing the money.

238. The damage inflicted on ROOD by OLDSMAR was intentional, malicious, without any pretext whatsoever as being in fulfillment of a legitimate governmental purpose.

WHEREFORE, Plaintiffs demand judgment against Defendant OLDSMAR, as follows:

a) Awarding damages to ROOD in the actual amount of damages incurred by ROOD, together with pre-judgment interest and costs;

b) Awarding punitive damages to ROOD in an amount commensurate with the egregiousness of OLDSMAR's action, and with the

OLDSMAR's ability to pay;

c) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

COUNT IX
ARBITRARY AND CAPRICIOUS LAND USE DESIGNATIONS

239. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 110, *supra*, inclusive, as if fully set out herein.

240. Prior to the adoption by OLDSMAR of its Comprehensive Plan, Plaintiffs' property was governed solely by the OLDSMAR Zoning Ordinance.

241. The OLDSMAR Zoning Ordinance zoned ROOD's property Residential Planned Development 7.5 units per acre on the Southern approximately 85 acres; and General Commercial on the Northern approximately 15 acres, adjacent to S.R. 584.

242. The OLDSMAR Zoning Ordinance zoned McLAUGHLIN's property Residential Planned Development 7.5 units per acre on the Southern approximately 27 acres; and General Commercial on the Northern approximately 8 acres,

adjacent to S.R. 584.

243. Plaintiff ROOD and McLAUGHLIN's predecessor COLLEN, purchased their property based on its reasonable Zoning Districts, without reference to the Comprehensive Plan.

244. When OLDSMAR was required by Chapter 163, Florida Statutes 1979 to adopt a Comprehensive Plan, it elected to simply but unlawfully mimic the Future Land Use designations of the Pinellas County Planning Council Comprehensive Plan.

245. The P.P.C. was subsequently declared to be unconstitutional and to have improperly adopted its Comprehensive Plan.

246. The designations of ROOD and McLAUGHLIN's properties in the P.P.C. Plan, mimicked in the OLDSMAR Comprehensive Plan, are arbitrary and capricious, not rationally related to a legitimate public purpose, and therefore work a taking of all economically beneficial use of Plaintiffs' property, and destroy Plaintiffs' reasonable investment backed expectations.

247. Arbitrary and capricious land use regulations are an unconstitutional denial of substantive due process.

248. Arbitrary and capricious land use regulations are unconstitutional in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

249. As the parties are required to restore each other to their pre-Development Agreement positions, these designations will again apply to Plaintiffs' properties.

250. In contrast, the Zoning Districts applicable to Plaintiffs' property were carefully established by OLDSMAR after thorough study of the area and the properties, are reasonable and appropriate, and permit economically beneficial use of ROOD and McLAUGHLIN's properties.

251. McLAUGHLIN has never conceded that the original Comprehensive Plan designations applicable to Plaintiffs' real property were reasonable and appropriate.

252. ROOD's alleged admission that the land use designations on his property were reasonable and appropriate is immaterial because the same alleged admission also stated that the conflicting Zoning Districts were reasonable and appropriate.

253. The only marketable site plans available to Plaintiffs are those pursuant to the 1985 Zoning

Districts and that attached to the now void original Development Agreement.

254. ROOD having applied unsuccessfully for Comprehensive Plan Amendments in 1985, Plaintiffs have exhausted their administrative remedies.

255. Any future efforts to resolve the Comprehensive Plan by pursuing administrative remedies with Defendant OLDSMAR would patently be futile, and thus these alleged remedies need not be pursued. Further, the proposed site plans rejected by OLDSMAR as described in ¶ 99 b), *supra*, required amendments to the Comprehensive Plan, and thus Plaintiffs have also exhausted these alleged administrative remedies.

256. The imposition by Defendant OLDSMAR of the Comprehensive Plan designations on Plaintiffs' property was arbitrary and capricious and not rationally related to the legitimate exercise of the police power.

257. By the arbitrary and capricious application of the unlawful Comprehensive Plan designations which simply mimicked the unlawful P.P.C. Comprehensive Plan, Defendant OLDSMAR took all economically beneficial use of Plaintiffs'

property rights in their property, damaging the Plaintiffs thereby, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States and of 42 U.S.C. § 1983 and of the Constitution of the State of Florida.

258. The actions of Defendant OLDSMAR which were arbitrary and capricious, were actions by Defendant under color of state law, in open and notorious violation of the rights of Plaintiffs to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States, and by the Constitution of the State of Florida, and Plaintiffs were damaged thereby.

259. The actions of Defendant which were arbitrary and capricious, interfered with Plaintiffs' reasonable, investment-backed expectations, damaging the Plaintiffs thereby. In particular:

a) the arbitrary and capricious Open Space designation on the McLAUGHLIN/COLLEN property denies McLAUGHLIN all use of that property;

b) the arbitrary and capricious Urban Low Density Residential designation on the North 15 acres

of ROOD's property is not rationally related to the legitimate exercise of the police power of the City;

c) Therefore, the designations, being arbitrary and capricious, work a taking of Plaintiffs' property.

260. As a result of said arbitrary and capricious actions of Defendant OLDSMAR, and OLDSMAR's interference with and violation of their civil rights, Plaintiffs lost opportunities to sell their property at a profit or to enter into business relationships for the property, and were required to pay on-going expenses related to their property, and were damaged thereby.

261. As a result of Defendant's unlawful actions, Plaintiffs lost the opportunity of selling their real property at a profit, they were also unlawfully denied the opportunity of investing the proceeds of such sales, and were damaged thereby.

262. Said damages occurred beginning for ROOD in the fall of 1985, and for McLAUGHLIN on June 30, 1992, and will continue until restitution is made by Defendant OLDSMAR.

263. Defendant knew or should reasonably

have known that its arbitrary and capricious actions would deny Plaintiffs protection of the Fifth and Fourteenth Amendments to the Constitution of the United States, thereby violating the provisions of 42 U.S.C., § 1983 and damaging Plaintiffs.

264. The damage inflicted on ROOD and McLAUGHLIN by OLDSMAR was intentional, malicious, without any pretext whatsoever as being in fulfillment of a legitimate governmental purpose.

WHEREFORE, Plaintiffs demand judgment against Defendant OLDSMAR, as follows:

a) Awarding damages to ROOD and McLAUGHLIN in the actual amount of damages incurred by ROOD and McLAUGHLIN, together with pre-judgment interest and costs;

b) Awarding punitive damages to ROOD and McLAUGHLIN in an amount commensurate with the egregiousness of OLDSMAR's action, and with OLDSMAR's ability to pay;

c) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

A jury trial is demanded for this Count.

COUNT X
FAILURE TO ATTACH COMPREHENSIVE PLAN TO ORDINANCE

265. Plaintiffs re-allege and incorporate herein ¶¶ 1 through 110, *supra*, as if fully set out herein.

266. By Ordinance 80-12, Defendant, City of OLDSMAR, purported to adopt a Comprehensive Plan pursuant to Chapter 163, Florida Statutes, 1979.

267. Said Comprehensive Plan was enforced against Plaintiff ROOD, and against McLAUGHLIN's predecessor in title, COLLEN, and damaged their reasonable investment-backed expectations.

268. Section 1 of Ordinance 80-12 states: "That the **attached** Land Use Element of the Oldsmar Comprehensive Plan is hereby adopted, ..." [Emphasis added].

269. No Land Use Element is attached to Ordinance 80-12, and no cross-reference to such an Element kept or maintained elsewhere is found in the Ordinance or elsewhere in the City's Official Records.

270. City Staff have expressed uncertainty as to the official status, or lack thereof, of the

document enforced as the Land Use Element of the Comprehensive Plan.

271. The failure of Defendant to attach or otherwise cross-reference the element, makes that portion of the Comprehensive Plan null and void *ab initio*.

272. As the parties are required to restore each other to their pre-Development Agreement positions, these designations will again apply to Plaintiffs' properties.

273. As a result of the actions of Defendant OLDSMAR in enforcing a void Comprehensive Plan against Plaintiffs, and of OLDSMAR's interference with and violation of their civil rights thereby, Plaintiffs lost opportunities to sell their property at a profit or to enter into business relationships for the property, and were required to pay on-going expenses related to their property, and were damaged thereby.

274. As a result of Defendant's unlawful actions, Plaintiffs lost the opportunity of selling their real property at a profit, they were also unlawfully denied the opportunity of investing the proceeds of such sales, and were damaged thereby.

275. Said damages occurred beginning for

ROOD in the fall of 1985, and for McLAUGHLIN on June 30, 1992, and will continue until restitution is made by Defendant OLDSMAR.

276. Defendant knew or should reasonably have known that its actions in enforcing a void Comprehensive Plan would deny Plaintiffs protection of the Fifth and Fourteenth Amendments to the Constitution of the United States, thereby violating the provisions of 42 U.S.C., § 1983 and damage Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against Defendant OLDSMAR, as follows:

a) Awarding damages to ROOD and McLAUGHLIN in the actual amount of damages incurred by ROOD and McLAUGHLIN, together with pre-judgment interest and costs;

b) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

A jury trial is demanded for this Count.

COUNT XI
DELAY

277. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 110, *supra*, inclusive, as if fully

set out herein.

278. Procedural due process of law, required by the Fifth and Fourteenth Amendments to the Constitution of the United States, requires that applications to agencies acting under color of state law, be processed in an equitable fashion, without undue delay.

279. Procedural due process further requires that delays not be imposed for pretextual reasons or for improper motives.

280. Defendants OLDSMAR, PINTA and STASZKO, acting under color of state law, in causing delays by refusing to approve a reasonable use of Plaintiffs' property, which refusal was arbitrary, capricious, and not based on competent substantial evidence, in violation of 42 U.S.C. § 1983, denied Plaintiffs procedural due process of law, and therefore the economically beneficial use of their property.

281. The delays and refusal of Defendants to approve any reasonable development proposal for Plaintiffs' real property were pretextual in nature, and based on an improper motive.

282. The delays and refusal of Defendants to approve any reasonable development proposal for

Plaintiffs' real property took, through the operation of the City's Land Development Regulations, all economically beneficial use of Plaintiffs' property without compensation and without due process of law, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and in violation of 42 U.S.C. § 1983 and of the Florida Constitution.

283. Said deprivation occurred beginning in April, 1990, and will continue until restitution is made.

284. Defendants' refusal to consider and approve a reasonable development plan for Plaintiffs' property was simply a pretext to stop, delay and/or minimize the yield of the development of Plaintiffs' land.

285. Defendant PINTA's actions were a pretext to assist his son in his proposed acquisition of the land now owned by McLAUGHLIN.

286. Defendants' delay and refusal to approve a reasonable development plan, further interfered with Plaintiffs' investment-backed expectations, arising from their analysis of the OLDSMAR Zoning Ordinance and of reasonable development potential of their properties.

287. Acting under color of state law, in open, notorious and repeated violation of the Fifth and Fourteenth Amendments to the Constitution of the United, States, Defendants acted arbitrarily and capriciously, in delaying that approval of a reasonable development plan for Plaintiffs' property.

288. During the period when Defendants refused to approve a reasonable development plan for Plaintiffs' land, Plaintiffs, through the operation of OLDSMAR's Land Development Regulations, lost all economically beneficial use of their property.

289. During this period when Plaintiffs lost all economically beneficial use of their property, Plaintiffs lost opportunities to sell their property at a profit, were required to pay on-going expenses related to their property, and were denied the benefit of the profits from their property.

290. The actions of Defendants, all under color of state law deprived Plaintiffs of Procedural Due Process of Law, as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States. Plaintiffs are entitled to an award of damages for these actions, under color of state law, of Defendants.

291. The damage inflicted on ROOD and

McLAUGHLIN by OLDSMAR, PINTA and STASZKO was intentional, malicious, without any pretext whatsoever as being in fulfillment of a legitimate governmental purpose.

WHEREFORE, Plaintiffs demand judgment against Defendants OLDSMAR, PINTA and STASZKO, as follows:

a) Awarding damages to ROOD and McLAUGHLIN in the actual amount of damages incurred by ROOD and McLAUGHLIN, together with pre-judgment interest and costs;

b) Awarding punitive damages to ROOD and McLAUGHLIN in an amount commensurate with the egregiousness of OLDSMAR's action, and with the OLDSMAR's ability to pay;

c) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

A jury trial is demanded for this Count.

COUNT XII
SLANDER OF TITLE

292. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 110, *supra*, inclusive, as if fully

set out herein.

293. This Count is pled as an alternative to Count II, *supra*, because if the Court finds that McLAUGHLIN's Notice of *Lis Pendens* forecloses the Development Agreement Amendment, then no Slander of Title will have occurred.

294. By the recording and maintaining of the Amended Development Agreement, which Agreement has never been executed to bind McLAUGHLIN or McLAUGHLIN's predecessor in title, Defendant has slandered the title of Plaintiffs' real property in that Defendant falsely and maliciously communicated to third parties a false idea about McLAUGHLIN's ownership of the subject real property.

295. Said slander has prevented Plaintiffs from freely dealing with the property, including refinancing the property, selling the property, or securing joint venture partners or merchant developers to develop the property.

296. Said slander has also caused Plaintiffs embarrassment and loss of reputation.

297. By the slandering the title of Plaintiffs' real property, Defendant OLDSMAR has damaged Plaintiffs.

298. The damage inflicted on Plaintiffs by Defendant OLDSMAR was intentional, malicious, without any pretext whatsoever as being in fulfillment of a legitimate governmental purpose.

WHEREFORE, Plaintiffs demand judgment against Defendant OLDSMAR, as follows:

a) Awarding damages to ROOD and McLAUGHLIN in the actual amount of damages incurred by ROOD and McLAUGHLIN, together with pre-judgment interest and costs;

b) Awarding punitive damages to ROOD and McLAUGHLIN in an amount commensurate with the egregiousness of OLDSMAR's action, and with the OLDSMAR's ability to pay;

c) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

A jury trial is demanded for this Count.

Respectfully submitted,

_____

E. B. Rood,

Plaintiff, *pro se*
200 North Pierce Street,
Tampa, Fl., 33602
(813) 229-6591

R. Bruce McLaughlin,
Plaintiff, *pro se*
900 Gulf Blvd., # 303
Indian Rocks Beach, Fl.,
34635
(813) 595-7634

I hereby certify that a true copy of the foregoing has been furnished to: Bryan Kutchins, Esq., P.O. Box 1063, Oldsmar, Fl., 34677, Eric Ager, 3375 Hunt Club Drive, Clearwater, Fl., 34621, and to Honorable Bernie McCabe, State Attorney, Sixth Judicial Circuit, 5100 144th Avenue North, Clearwater, Fl., 34620 by regular United States Mail, this _____ day of August, 1993.

E. B. Rood

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA CIVIL DIVISION

E. B. ROOD and R. BRUCE McLAUGHLIN,
Plaintiffs

v. Case No. 92-92-3764 CI 16

THE CITY OF OLDSMAR, a Florida Municipal Corporation, THOMAS PINTA and NICK STASZKO, in their individual and personal capacities, and ERIC AGER
Defendants

_____/

LIST OF EXHIBITS

A. Legal Description, ROOD Property

B. Legal Description, McLAUGHLIN/COLLEN Property

C. Ordinance 85-37

D. Resolution 86-14

E. Objection to Sewage Capacity Sale

F. Contract Pursuant to Resolution 86-14

G. Development Agreement

H. Pinellas County Planning Council Resolution 90-4

I. ROOD/OLDSMAR Petition to the Florida Department of Community Affairs

J. Letter, Collen's Attorney to Oldsmar, 5/25/90, reflecting objections of Collen to Amended Development Agreement

K. Purported Amended Development Agreement

L. Demand for Termination of Development Agreement and Refund of Money

M. City's Refusal of Demand

N. Notice of *Lis Pendens* and Supplemental Final Judgment of Foreclosure, McLAUGHLIN v. COLLEN, case No. 90-4133-007

O. Executive Summary, Planning Feasibility Study, Rood/Collen Properties, May, 1987

P. Transportation Analysis, Collen/Rood

Properties, June, 1987

Q. Excerpt, West Oldsmar Plat

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA CIVIL DIVISION

E. B. ROOD and R. BRUCE McLAUGHLIN,
Plaintiffs

v. Case No. 92-92-3764CI 07

THE CITY OF OLDSMAR, a Florida Municipal Corporation, THOMAS PINTA and NICK STASZKO, in their individual and personal capacities, and ERIC AGER
Defendants

_____/

FOURTH AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, FOR RECISION OF CONTRACT, AND FOR DAMAGES

DEMAND FOR A JURY TRIAL

Plaintiffs E. B. ROOD (hereinafter "ROOD") and R. BRUCE McLAUGHLIN (hereinafter "McLAUGHLIN") sue Defendants the CITY OF OLDSMAR (hereinafter "OLDSMAR"), THOMAS PINTA (hereinafter "PINTA"), NICK STASZKO (hereinafter "STASZKO"), and ERIC AGER (hereinafter "AGER"), and for their Complaint allege as follows:

A. INTRODUCTION

I. JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to § 26.012(2)(a), Florida Statutes. This is, in part, an action for damages in excess of $15,000, exclusive of interest, costs and attorneys' fees.

2. The jurisdiction of this Court is invoked pursuant to § 86.011, Florida Statutes, which authorizes Circuit Courts to enter declaratory judgments within their monetary jurisdictional limits.

3. The jurisdiction of this Court is also invoked pursuant to § 26.012 (3), F.S., which authorizes Circuit Courts to issue injunctions.

4. The jurisdiction of this Court is also invoked pursuant the Fifth and Fourteenth Amendments to the Constitution of the United

States, to 42 U.S.C. § 1983, and to 28 U.S.C. §1343(a)(3).

5. This Court has concurrent jurisdiction with the United States District Court under 42 U.S.C. § 1983 and 28 U.S.C. § 1343 pursuant to *Howlett v. Rose*, 110 S.Ct. 2430 (1990).

6. This is a cause of action arising under the Fifth and Fourteenth Amendments to the Constitution of the United States as enforced through 42 U.S.C. § 1983. Plaintiffs allege that Defendants, acting under color of state law, deprived Plaintiffs of rights, privileges and immunities guaranteed by the Constitution of the United States. This Court has jurisdiction over actions under 42 U.S.C. § 1983 as set out in ¶¶ 4 and 5, *supra*.

7. With respect to Part B, *infra*, Declaratory Judgment against AGER, and with respect to Part C, *infra*, Declaratory and Injunctive Relief against OLDSMAR, Plaintiffs assert that their positions espoused in this Complaint are legally sound and supported by fact and law. The Defendants' actions, however, have created a *bona fide* controversy between the parties. Plaintiffs require, therefore, a declaratory judgment declaring their rights, privileges and immunities.

8. In particular, McLAUGHLIN not being a party to any of the preceding transactions with OLDSMAR, requires a Declaratory Judgment setting forth his rights, obligations and privileges related to:

a) The governing law re. the payment of sewage impact fees;

b) The status of the Original Development Agreement and the Amended Development Agreement which OLDSMAR alleges apply to McLAUGHLIN's real property;

c) The validity and applicability of the Future Land Use Element of the City of OLDSMAR Comprehensive Plan, as it existed in 1982, to McLAUGHLIN's real property.

9. With respect to Part B, *infra*, Declaratory Judgment against AGER, and with respect to Part C, *infra*, Declaratory and Injunctive Relief against OLDSMAR, Plaintiffs have no adequate remedy at law.

10. With respect to Part C, *infra*, Declaratory and Injunctive Relief against

OLDSMAR, Plaintiffs, will suffer irreparable harm if Defendants are allowed to continue their conduct sought to be enjoined herein.

II. THE PARTIES

11. Plaintiff, E. B. ROOD is the owner of that certain parcel of real property located within the corporate limits of Defendant, the CITY OF OLDSMAR and more particularly described on Exhibit A, attached to the Third Amended Complaint herein and made a part hereof by reference. ROOD has been the owner of said property at all material times.

12. Plaintiff McLAUGHLIN is the owner of that certain parcel of real property located within the corporate limits of Defendant, the CITY OF OLDSMAR and more particularly described on Exhibit B, attached to the Third Amended Complaint herein and made a part hereof by reference. McLAUGHLIN is the successor by foreclosure to KEITH R. COLLEN (hereinafter "COLLEN").

13. Defendant, OLDSMAR is a Florida Municipal Corporation.

14. All actions of Defendant OLDSMAR complained of herein were actions under color of

state law, and were official policy, custom and usage of OLDSMAR in violation of immunities, rights and privileges guaranteed to Plaintiffs by the Constitution and Laws of the United States and of the State of Florida.

15. The actions of Defendant OLDSMAR were further a part of a pattern of misconduct as demonstrated in this Complaint and by the actions of Defendant towards other Developers, which pattern of misconduct is the official policy and custom of the City. This pattern, custom and usage further has deprived, and is continuing to deprive, Plaintiffs of Constitutionally protected rights under the Fifth and Fourteenth Amendments to the Constitution of the United States.

16. The pattern of misconduct, official policy, custom and usage of Defendant OLDSMAR was the direct and proximate cause of the damages suffered by Plaintiffs as set out *infra*.

17. Defendant PINTA was at all material times a member of the City Council of the CITY OF OLDSMAR and is sued in his individual and personal capacities.

18. Defendant STASZKO was at all material times the Planning Director of the CITY OF

OLDSMAR and is sued in his individual and personal capacities

19. Defendant AGER is a Consultant to ROOD and COLLEN who asserts a claim against ROOD and COLLEN related to issues herein.

III. GENERAL ALLEGATIONS

III.A. HISTORICAL BACKGROUND

20. ROOD purchased his property, (comprising approximately 100 acres) in 1982.

21. McLAUGHLIN's predecessor in title, COLLEN, purchased his property, (comprising approximately 35 acres), in 1982.

22. McLAUGHLIN acquired COLLEN's former property through the foreclosure of a mechanic's lien recorded in the Public Records of Pinellas County, Florida.

23. Previously, COLLEN had attempted to sell his property to ROOD by means of a deed executed on October 17, 1990 and recorded on August 15, 1991 in Official Records Book 7653, Page 274, Public Records of Pinellas County, Florida.

24. However, the transaction from COLLEN to ROOD was barred by McLAUGHLIN's Notice of

Lis Pendens, recorded on March 8, 1990 in Official Records Book 7219, Page 304, Public Records of Pinellas County, Florida.

25. Accordingly, McLAUGHLIN has good and marketable title to the property described on Exhibit B.

26. At the time of ROOD's purchase of the property described on Exhibit A, said property was zoned C-2, General Commercial (approximately 15 acres along the S.R. 584 frontage) and R.P.D. 7.5, Residential Planned Development, 7.5 units per acre (approximately 85 acres in the South part of the property).

27. At the time of ROOD's purchase of the property described on Exhibit A, said property was designated Urban Low Density Residential in the purported OLDSMAR Comprehensive Plan.

28. At the time of COLLEN's purchase of the property described on Exhibit B, said property was zoned C-2, General Commercial (approximately 8 acres along the S.R. 584 frontage) and R.P.D. 7.5, Residential Planned Development, 7.5 units per acre (approximately 27 acres in the South part of the property).

29. At the time of COLLEN's purchase of

the property described on Exhibit B, said property was designated Open Space in the purported OLDSMAR Comprehensive Plan.

30. When McLAUGHLIN first obtained a judgment against COLLEN, and had the Pinellas County Sheriff levy against COLLEN's property to satisfy that judgment, John Pinta, son of Defendant THOMAS PINTA, appeared at the Sheriff's sale with the announced intention of bidding for the property. However, McLAUGHLIN elected to postpone the sale and no bids were taken.

31. When McLAUGHLIN secured a judgment on his Mechanic's Lien, and foreclosed said lien, John Pinta, son of Defendant THOMAS PINTA, appeared at the Clerk's sale and bid for the property.

32. In the latter part of the negotiations with OLDSMAR, beginning in approximately June, 1990, (and just after McLAUGHLIN commenced his action against COLLEN,) Defendant PINTA, as a Member of the City Council, became intransigent as to ROOD's development proposals and led the City in obstructing and delaying the reasonable development of Plaintiffs' property.

III.B. DEVELOPMENT OVERTURES

33. Beginning in 1985, ROOD attempted to develop his property in accordance with the OLDSMAR Zoning Ordinance.

34. In particular, ROOD made application to OLDSMAR for the issuance of site development approvals and Building Permits for a Shopping Center of approximately 150,000 square feet to be located on the 15 acres of ROOD's property zoned C-2.

35. ROOD's application for site development approval and Building Permits was denied by OLDSMAR because the proposed use was inconsistent with the Comprehensive Plan designation of Urban Low Density Residential.

36. Contemporaneously with ROOD's applications to OLDSMAR, McLAUGHLIN's predecessor COLLEN also made enquiries of the City with respect to the development of his property in accordance with OLDSMAR's Zoning Ordinance.

37. After ROOD's applications for approval of the proposed Shopping Center were denied by OLDSMAR, ROOD retained McLAUGHLIN to determine if an amendment to the OLDSMAR Comprehensive Plan could be obtained.

III.C. THE DEVELOPMENT AGREEMENT

38. After ROOD pre-purchased sewage capacity, based on his then existing Zoning Districts of C-2 and R.P.D. 7.5, and while ROOD and COLLEN were continuing their discussions with OLDSMAR with respect to amending OLDSMAR's alleged Comprehensive Plan to make it consistent with the Zoning Ordinance, OLDSMAR, through its City Manager, Bruce Haddock (hereinafter "HADDOCK") suggested to ROOD and COLLEN that they combine their respective properties into a single development.

39. During the negotiations which lead up to the original Development Agreement, Defendant AGER offered his services to ROOD, COLLEN and McLAUGHLIN as an advisor with respect to negotiations with the members of the OLDSMAR City Council.

40. AGER was to be compensated a reasonable amount, to be determined by the parties, if a Development Agreement were approved and consummated.

41. After extensive negotiations amongst the parties, the terms and conditions of a Development Agreement were agreed upon by the parties and

ratified by the City Council on May 5, 1987. The Development Agreement is found as Exhibit G, attached to the Third Amended Complaint herein and made a part hereof by reference. [1]

42. The Development Agreement provides that it shall run and exist for the statutorily permitted five years, *i.e.*, until February 4, 1993.

III.D. THE DEVELOPMENT AGREEMENT STATUS

43. Notwithstanding the requirement of ¶ 6 of the Development Agreement, that the Agreement automatically terminate upon the preclusion of its fulfillment by the P.P.C., ROOD and OLDSMAR, on the failure of Pinellas County to approve a collector road through ROOD's property, sought to negotiate different solutions to the problems of the proposed development created by OLDSMAR's planning controls which existed prior to the adoption of the Development Agreement.

44. ROOD and OLDSMAR ultimately

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[1] Pursuant to O.R. Book 6830, Page 913, this Exhibit is attached as it is found in the Public Records of Pinellas County, except that a small scale version of Exhibit C to the Original Development Agreement is also attached. For ease of reference, Exhibit C to the Development Agreement (Exhibit G hereto,) will hereafter be referred to as the "Site Plan".

found a new solution but were unable to secure the approval of that solution by COLLEN, see, *e.g.*, Exhibit J, attached to the Third Amended Complaint herein and made a part hereof by reference.

45. On March 20, 1990 OLDSMAR executed an amendment to the Development Agreement, which was executed by ROOD on May 23, 1990 (Exhibit K, attached to the Third Amended Complaint herein and made a part hereof by reference).

46. OLDSMAR recorded the original Development Agreement in the Public Records of Pinellas County, and, on August 9, 1991, recorded the unsigned amendment in the Pinellas County Public Records, in Official Records Book 7648, Page 1914.

47. Further, efforts to secure developers/purchasers to undertake the development of the property or to find lenders to finance such development have been unsuccessful.

48. Because Defendants, subsequent to the inability of the parties to secure approval of a collector road through ROOD's property, have failed and refused to approve any plan for the economically beneficial development of Plaintiffs'

property, the property has not been marketable to developers or lenders, even though ROOD has, since approximately June 1990, negotiated in good faith with Defendants OLDSMAR and STASZKO to reach agreement on an actual amendment to the Agreement that would be marketable.

49. In the course of these efforts, ROOD has expended considerable time, money and effort.

50. Although ROOD has consistently sought to reach agreement on an actual amendment to the marketable site plan approved in the original Development Agreement, Defendants, OLDSMAR, PINTA and STASZKO, have delayed and obfuscated the process, and have failed and refused to approve workable, mutually beneficial plans that represent sound and marketable urban design, consistency with the Comprehensive Plan, and good development.

51. The actions of OLDSMAR, STASZKO and PINTA complained of herein include, by way of example and not limitation:

a) Refusal of STASZKO to allow the Florida Department of Transportation to exercise its lawful jurisdiction with respect to driveway permits on S.R. 584;

b) Rejection of the best plans for the development on, *inter alia*, the following dates:
   i) August 18, 1992;
   ii) February 18, 1992; and
   iii) March 5, 1991.

c) Or the approval of site plans but with such numerous and onerous conditions (approximately 15 in number) that the changes required were arbitrary and capricious and therefore took all economically beneficial use of Plaintiffs' property;

d) Imposition of development requirements which made the development cost prohibitive;

e) causing enumerable, unwarranted delays in processing development plans;

f) requiring that the golf course part of the development be fully constructed and operating prior to the construction and occupancy of other parts of the

development.

thereby acting arbitrarily and capriciously and taking from Plaintiffs all economically beneficial use of their property, and destroying Plaintiffs' reasonable investment-backed expectations.

52. The parties, ROOD, McLAUGHLIN, as successor to COLLEN, and OLDSMAR, have not reached agreement on amendments to the original Development Agreement and thus are bound by the original Development Agreement, which is the only agreement amongst them, but which has become invalid through the expiration of its five year period of existence.

53. Thus, fulfillment of the terms and conditions of the original Development Agreement has been precluded by the inability of the parties to fulfill its terms and conditions within its five year period of validity.

54. Proof of the inability of the parties to fulfill the original Development Agreement is found in the execution, by OLDSMAR, of an amendment to the original agreement.

55. Therefore, the original Development Agreement has become invalid through the operation of time. The parties have not met, conferred and

reached agreement on an extension of the Agreement, and the parties are thus required to restore each other to their pre-agreement positions.

56. ROOD and McLAUGHLIN have declared the Development Agreement to be terminated and have requested a refund of funds paid pursuant to the Agreement and that the parties otherwise restore each other to their pre-agreement positions. (Exhibit L, attached to the Third Amended Complaint herein and made a part hereof by reference.)

57. OLDSMAR has refused to refund the monies at issue to ROOD. (Exhibit M, attached to the Third Amended Complaint herein and made a part hereof by reference.)

58. On the completion of this action, Plaintiffs expect that this Honorable Court will declare the Original Development Agreement to have become invalid by operation of time, and the Amended Development Agreement to be null and void. Plaintiffs further expect that the Comprehensive Plan designations applicable to their properties will also be quashed, leaving a final development approval pursuant to the 1982 Zoning Districts applicable to the property.

B. DECLARATORY JUDGMENT AGAINST AGER

59. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 58, *supra*, inclusive, as if fully set out herein.

60. This is an action for Declaratory Judgment pursuant to Chapter 86, Florida Statutes.

61. Defendant AGER asserts a claim against ROOD and against McLAUGHLIN's real property for his services related to the original Development Agreement.

62. ROOD and McLAUGHLIN's predecessor, COLLEN, agreed to compensate AGER for his services if two conditions precedent were met:

a) That agreement were reached between ROOD, COLLEN and OLDSMAR; and

b) That the agreement were actually consummated by the development of the ROOD and McLAUGHLIN properties in accordance with the Agreement.

63. The first condition precedent has been fulfilled, but the second condition precedent, the

consummation of the agreement, has not and cannot be fulfilled.

64. Plaintiffs herein do not challenge AGER's claims against COLLEN or AGER's claims related to services performed in the physical maintenance of COLLEN's property.

65. A dispute exists between Plaintiffs ROOD and McLAUGHLIN and Defendant AGER with respect to the obligation, if any, of Plaintiffs to AGER.

66. Plaintiffs ROOD and McLAUGHLIN are in doubt as to their obligations, if any, to Defendant AGER.

WHEREFORE, Plaintiffs demand judgment against Defendant AGER, as follows:

a) A judgment by the Court determining Plaintiff's obligations, if any, to Defendant AGER with respect to his services related to the original Development Agreement, and declaring that Plaintiffs ROOD and McLAUGHLIN have no obligation to Defendant AGER for services performed related to the original Development Agreement.

b) A judgment awarding Plaintiffs

their costs and such other relief as the Court deems just and proper.

C. DECLARATORY AND INJUNCTIVE RELIEF AGAINST DEFENDANT OLDSMAR

67. Counts I through IV, inclusive, hereof, are an action for Declaratory Relief pursuant to Chapter 86, Florida Statutes.

68. Counts I through IV, inclusive, hereof, are also an action for Injunctive Relief pursuant to § 26.012 (3), F.S.

COUNT I
SEWAGE CAPACITY SALE
UNLAWFUL AMENDMENT OF AN ORDINANCE

69. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 58, *supra*, inclusive, as if fully set out herein.

70. At the time ROOD was making his application to OLDSMAR for approval of the proposed Shopping Center, OLDSMAR had a significant shortage of capacity in its Sewage Treatment Plant, and had no funds available to cure said shortage.

71. At that time, prior to the adoption of Resolution 86-14, connections to the OLDSMAR sewage system, and sewer impact fees were governed by OLDSMAR **Ordinance** 85-37, Exhibit C, attached to the Third Amended Complaint herein and made a part hereof by reference.

72. On May 20, 1986, OLDSMAR adopted **Resolution** 86-14, (Exhibit D, attached to the Third Amended Complaint herein and made a part hereof by reference,) establishing a method by which sewage capacity would be sold, sewer impact fees pre-paid, and funding for an expansion to the Sewage Treatment Plant thereby obtained.

73. Resolution 86-14 amended Ordinance 85-37.

74. ROOD's payment to OLDSMAR was made pursuant to a contract, (Exhibit F,) purportedly authorized by Resolution 86-14.

75. The sum of $715,000 was calculated for ROOD by McLAUGHLIN and others, based on the sewage generated by development in accordance with the Zoning Ordinance.

76. In the sale of sewage capacity, OLDSMAR hoped to sell all (except for a reservation for "small projects", not applicable to

ROOD or McLAUGHLIN's properties) of the capacity of the proposed expansion of the Sewage Treatment Plant which, if the sale of all capacity had occurred, would have prevented any major development in OLDSMAR, except by those who had purchased sewage capacity, for the foreseeable future.

77. ROOD purchased sewage capacity because OLDSMAR had already placed so many obstacles in the path of his proposed development, that if all of the sewage capacity were sold in the sale, the additional delay in the development of his property would have destroyed all value of his property.

78. Although Resolution 86-14, on its face, alleges its consistency with Ordinance 85-37, the Resolution is, in fact, inconsistent, and is a *de facto* and *de jure* amendment to the Ordinance in the following substantial and material ways:

a) Ordinance 85-37 provides for the payment of impact fees at times certain in the building process; Resolution 86-14 requires the payment of impact fees at 12:00 noon on June 27, 1986;

b) As an alternative to the payment of impact fees during the building process, Ordinance 85-37, itself, provides a mechanism for an advance reservation of sewage capacity, with payments made pursuant thereto being refundable; Resolution 86-14 provides that reservation fees are non-refundable;

c) Ordinance 85-37 makes no provision for the availability of water and sewer service to "small" projects; Resolution 86-14 sets aside 25% of the City's available water and sewer capacity for "small projects";

d) Ordinance 85-37 provides that sewage capacity reserved may be used anywhere in the City's sewer service area; Resolution 86-14 limits the use of reserved capacity to property precisely defined in the reservation.

79. Therefore, and notwithstanding the

allegation on the face of Resolution 86-14 that it is consistent with Ordinance 85-37, the Resolution is inconsistent and actually and unlawfully amends the Ordinance. Therefore, Resolution 86-14 must be declared null and void.

80. A dispute exists between Plaintiffs ROOD and McLAUGHLIN and Defendant OLDSMAR with respect to the validity of Resolution 86-14.

81. Plaintiffs ROOD and McLAUGHLIN are in doubt as to their obligations, pursuant to Resolution 86-14.

82. McLAUGHLIN, not having been a party to any of the previous transactions related to Ordinance 85-37 and Resolution 86-14, is in extreme doubt about his rights, privileges, immunities and obligations pursuant to these legislative acts of OLDSMAR.

WHEREFORE, Plaintiffs demand judgment against Defendant OLDSMAR, as follows:

a) Entering a judgment by the Court declaring that Defendant OLDSMAR improperly attempted to amend Ordinance 85-37 by Resolution 86-14, and that OLDSMAR Resolution 86-14 is null

and void *ab initio*, and without any force or effect whatsoever;

b) Entering a prohibitory injunction prohibiting Defendant OLDSMAR and all others acting on behalf of, in privity with, or in conjunction with OLDSMAR from enforcing or attempting to enforce the provisions of Resolution 86-14;

c) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

COUNT II
THE DEVELOPMENT AGREEMENT AMENDMENT

83. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 58, *supra*, inclusive, as if fully set out herein.

84. Only one Development Agreement, without amendment, exists between Plaintiffs ROOD and McLAUGHLIN and Defendant OLDSMAR.

85. Instead of agreeing to the automatic termination of the original Development Agreement (as set out in Count III of the Third Amended Complaint, or that the Agreement has become invalid through the operation of time {Counts IV and VI, *infra*}), OLDSMAR is attempting to enforce a

purported amendment to the Development Agreement which was executed by ROOD and OLDSMAR but which was never executed on behalf of McLAUGHLIN's predecessor COLLEN and which does not bind McLAUGHLIN.

86. Further, the Development Agreement Amendment was established in the course of the following chronology:

a) **March 8, 1990**, McLAUGHLIN begins action against COLLEN, Case No. 90-4133, *Lis Pendens* filed, O.R. Book 7219, Page 304;

b) **March 20, 1990**, "Amended" Development Agreement executed by City;

c) **May 23, 1990**, "Amended" Development Agreement executed by ROOD;

d) **October 17, 1990**, COLLEN executes deed of his property to ROOD;

e) **August 9, 1991**, Oldsmar records "Amended" Development Agreement;

f) **August 15, 1991**, ROOD records

deed.

g) **May 22, 1992**, Supplemental Final Judgment entered in McLAUGHLIN v. COLLEN; ¶ 13 provides:

> On filing of the Certificate of Title, the Defendant, KEITH R. COLLEN and all persons claiming under or against said Defendant since the filing of McLAUGHLIN's Notice of Lis Pendens, shall be foreclosed of all estate or claim in the real property hereinbefore described ..." (Exhibit N, attached to the Third Amended Complaint herein and made a part hereof by reference.)

87. Therefore, both the Development Agreement Amendment and COLLEN's deed to ROOD are foreclosed by the final judgment for McLAUGHLIN and his previous Notice of *Lis Pendens*.

88. Thus, at law and in equity, the Development Agreement Amendment is a nullity.

89. A dispute exists between Plaintiffs ROOD and McLAUGHLIN and Defendant OLDSMAR with respect to the status of the Development Agreement Amendment and with respect to the obligations of the parties thereunder.

90. Plaintiffs ROOD and McLAUGHLIN are in doubt as to their obligations, pursuant to the Development Agreement Amendment.

WHEREFORE, Plaintiffs demand judgment against Defendant OLDSMAR, as follows:

a) Entering a judgment by the Court declaring that the Development Agreement Amendment has been foreclosed by McLAUGHLIN's foreclosure of COLLEN's property and is therefore a nullity;

b) Entering a judgment by the Court declaring that if there is any controlling Development Agreement between Plaintiffs ROOD and McLAUGHLIN and Defendant OLDSMAR, it is the original agreement, recorded in Official Records Book 6825, Page 1563, and re-recorded in Official Records Book 6830, Page 897, Public Records of Pinellas County, Florida and that there is no valid and binding amendment to said agreement;

c) Entering a prohibitory injunction prohibiting Defendant OLDSMAR and all others acting on behalf of, in privity with, or in conjunction with OLDSMAR from enforcing or attempting to enforce the provisions of any Development Agreement Amendment applicable to ROOD and McLAUGHLIN's properties;

d) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

COUNT III
THE COMPREHENSIVE PLAN DESIGNATIONS

91. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 58, *supra*, inclusive, as if fully set out herein.

92. Prior to the adoption by OLDSMAR of its Comprehensive Plan, (on December 16, 1980), the City had no Comprehensive Plan and Plaintiffs' property was governed solely by the OLDSMAR Zoning Ordinance.

93. The OLDSMAR Zoning Ordinance adopted on October 10, 1972, zoned ROOD's property Residential Planned Development 7.5 units per acre on the Southern approximately 85 acres;

and General Commercial on the Northern approximately 15 acres, adjacent to S.R. 584.

94. The same OLDSMAR Zoning Ordinance zoned McLAUGHLIN's property Residential Planned Development 7.5 units per acre on the Southern approximately 27 acres; and General Commercial on the Northern approximately 8 acres, adjacent to S.R. 584.

95. Plaintiff ROOD and McLAUGHLIN's predecessor COLLEN, purchased their property based on its reasonable Zoning Districts, without reference to the Comprehensive Plan.

96. In December, 1980, when OLDSMAR was required by Chapter 163, Florida Statutes 1979 to purportedly adopt a Comprehensive Plan, it elected to simply but unlawfully mimic (*i.e.*, copy verbatim,) the Future Land Use designations of the Pinellas County Planning Council (P.P.C.) Comprehensive Plan.

97. The P.P.C. was subsequently declared to be unconstitutional and to have improperly adopted its Comprehensive Plan.

98. The P.P.C. designations of Urban Low Density Residential on ROOD's property and Open Space on the COLLEN/McLAUGHLIN property did

not take into account the adjacent major arterial road, State Road (S.R.) 584, the intensive commercial development along S.R. 584, and the moderate industrial development to the North of the Plaintiffs' properties, across S.R. 584.

99. The designations of ROOD and McLAUGHLIN's properties in the P.P.C. Plan, mimicked in the OLDSMAR Comprehensive Plan, are arbitrary and capricious, not rationally related to a legitimate public purpose, work a taking of all economically beneficial use of Plaintiffs' property, and destroy Plaintiffs' reasonable investment backed expectations.

100. The Open Space designation on the COLLEN/McLAUGHLIN prohibited all economically beneficial use of all the property, was arbitrary and capricious, not rationally related to the legitimate exercise of the police power, and worked a taking of all beneficial use of the property. The designation also destroyed the owners' reasonable, investment-backed expectations.

101. Arbitrary and capricious land use regulations are unconstitutional in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

102. As the parties are required to restore each other to their pre-Development Agreement positions, these designations will again apply to Plaintiffs' properties.

103. In contrast, the Zoning Districts applicable to Plaintiffs' property were carefully established by OLDSMAR after thorough study of the area and the properties, are reasonable and appropriate, and permit economically beneficial use of ROOD and McLAUGHLIN's properties.

104. McLAUGHLIN has never conceded that the original Comprehensive Plan designations applicable to Plaintiffs' real property were reasonable and appropriate.

105. ROOD's alleged admission that the land use designations on his property were reasonable and appropriate is immaterial because the same alleged admission also stated that the conflicting Zoning Districts governing ROOD's land were reasonable and appropriate.

106. The only marketable site plans available to Plaintiffs are those pursuant to the 1985 Zoning Districts and that attached to the now invalid original Development Agreement.

107. ROOD having applied unsuccessfully

for Comprehensive Plan Amendments in 1985, Plaintiffs have exhausted their administrative remedies.

108. Further, any future efforts to resolve the Comprehensive Plan by pursuing administrative remedies with Defendant OLDSMAR would patently be futile, and thus these alleged remedies need not be pursued. Further, the proposed site plans rejected by OLDSMAR as described in ¶ 51 b), *supra*, required amendments to the Comprehensive Plan, and thus Plaintiffs have also exhausted these alleged administrative remedies.

109. A dispute exists between Plaintiffs ROOD and McLAUGHLIN and Defendant OLDSMAR with respect to the application of the Pinellas County Planning Council Comprehensive Plan, as mimicked in the OLDSMAR Comprehensive Plan, to Plaintiffs' lands.

110. Plaintiffs ROOD and McLAUGHLIN are in doubt as to their obligations, pursuant to the OLDSMAR Comprehensive Plan.

WHEREFORE, Plaintiffs demand judgment against Defendant OLDSMAR, as follows:

a) Entering a judgment by the Court

declaring that the OLDSMAR Comprehensive Plan unlawfully mimicked the invalid Pinellas County Planning Council Comprehensive Plan, and that the designations of the Comprehensive Plan applicable to Plaintiffs' properties are arbitrary and capricious, without a rational relationship to the legitimate exercise of the police power, and work a taking of all economically beneficial use of Plaintiffs' property;

b) Entering a judgment by the Court declaring that the Zoning Districts previously established by OLDSMAR on Plaintiffs' property are correct and reasonable, and should govern in place of the Comprehensive Plan designations;

c) Entering a prohibitory injunction prohibiting Defendant OLDSMAR and all others acting on behalf of, in privity with, or in conjunction with OLDSMAR from enforcing or attempting to enforce the provisions of the OLDSMAR Comprehensive Plan with respect to ROOD and McLAUGHLIN's properties;

d) Entering a mandatory injunction requiring Defendant OLDSMAR to amend its Comprehensive Plan to make it consistent with the Zoning Districts applicable to Plaintiffs' properties,

and to vigorously seek the approval of this amendment from all agencies with jurisdiction;

e) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

COUNT IV
REFUSAL TO TERMINATE DEVELOPMENT AGREEMENT AND REFUND FEES [2]

111. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 58, *supra*, inclusive, as if fully set out herein.

112. As set out in ¶ 2 on page 899 of the original Development Agreement (Exhibit G, hereto,) the Development Agreement is "valid for a period of five (5) years from the date that it is executed by all parties."

113. The original Development Agreement was executed by all parties on February 4, 1988.

114. Five years have now run since the execution of the original Development Agreement,

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[2] The period of validity of the original Development Agreement ran for five years from February 4, 1988. At the time this action was commenced, the original Development Agreement had **not** become invalid through the operation of time. Time has now operated to make the original Development Agreement, and this is Plaintiffs' first proper opportunity to raise this issue and count.

and the original Development Agreement is thus, by its own terms, no longer valid.

WHEREFORE, Plaintiffs demand judgment against Defendant OLDSMAR, as follows:

a) Entering a judgment by the Court declaring that the original (1988) Development Agreement is no longer valid by operation of time and the terms of the Agreement and that there is no valid and binding Development Agreement between the parties;

b) Entering a prohibitory injunction prohibiting Defendant OLDSMAR and all others acting on behalf of, in privity with, or in conjunction with OLDSMAR from enforcing or attempting to enforce the provisions of any Development Agreement applicable to ROOD and McLAUGHLIN's properties;

c) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

D. COMPLAINT FOR RECISION OF CONTRACT
COUNT V
SEWAGE CAPACITY SALE
UNLAWFUL RESOLUTION

115. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 58, *supra*, inclusive, as if fully set out herein.

116. This is an action to rescind a contract, which contract is found as Exhibit F to the Third Amended Complaint herein, incorporated herein by reference, and evidencing an obligation in excess of $15,000.

117. On May 20, 1986, OLDSMAR enacted Resolution 86-14, which purportedly permitted OLDSMAR to enter into contracts for the sale of sewage treatment capacity, pursuant to the terms of the Resolution.

118. ROOD and OLDSMAR executed a contract (Exhibit F hereto) pursuant to Resolution 86-14.

119. ROOD paid OLDSMAR the sum of $715,000, pursuant to the contract.

120. Prior to the adoption of Resolution 86-14 the purchase and allocation of sewage capacity in

OLDSMAR was governed by Ordinance 85-37.

121. Resolution 86-14 purported to amend Ordinance 85-37.

122. Under Florida law, an Ordinance may not be amended except by another Ordinance. In particular, an Ordinance may not be amended by a resolution.

123. Although Resolution 86-14 alleges, on its face, its consistency with Ordinance 85-37, the Resolution is, in fact, inconsistent, and is a *de facto* and *de jure* amendment to the Ordinance in the following substantial and material ways:

a) Ordinance 85-37 provides for the payment of impact fees at times certain in the building process; Resolution 86-14 requires the payment of impact fees at 12:00 noon on June 27, 1986;

b) As an alternative to the payment of impact fees during the building process, Ordinance 85-37, itself, provides a mechanism for an advance reservation of sewage capacity, with payments made pursuant thereto being

refundable; Resolution 86-14 provides that reservation fees are non-refundable;

c) Ordinance 85-37 makes no provision for the availability of water and sewer service to "small" projects; Resolution 86-14 sets aside 25% of the City's available water and sewer capacity for "small projects";

d) Ordinance 85-37 provides that sewage capacity reserved may be used anywhere in the City's sewer service area; Resolution 86-14 limits the use of reserved capacity to property precisely defined in the reservation.

124. Therefore, and notwithstanding the allegation on the face of Resolution 86-14 that it is consistent with Ordinance 85-37, the Resolution is inconsistent and actually and unlawfully amends the Ordinance, and, thus there is no repugnancy between this Complaint and Exhibit D.

125. Therefore, OLDSMAR was without legal authority to enter into the contract with ROOD,

and the contract is null and void, and without any force or effect whatsoever.

126. In the procedures used by Defendant OLDSMAR in the sewage capacity sale, OLDSMAR knowingly and unlawfully entered into a contract (Exhibit F hereto) with ROOD, with said contract being provided for and set forth in Resolution 86-14, which unlawfully amended Ordinance 85-37.

127. As a contract authorized by unlawful means, the contract between ROOD and OLDSMAR for the purchase of sewage treatment capacity is null and void *ab initio*, and must therefore be rescinded and OLDSMAR be required to return to ROOD the $715,000 which ROOD paid to OLDSMAR pursuant to the contract.

128. ROOD has demanded cancellation of the contract and refund of the funds paid pursuant thereto, but OLDSMAR has refused to cancel the contract and refund the monies paid pursuant thereto.

129. Plaintiffs have no adequate remedy at law because Plaintiff is presently required to leave with OLDSMAR funds which OLDSMAR obtained illegally and is not entitled to keep.

WHEREFORE, Plaintiffs demand judgment

against Defendant OLDSMAR, as follows:

a) Entering an Order by this Court rescinding the contract (Exhibit F) between ROOD and OLDSMAR and compelling OLDSMAR to return to ROOD the $715,000 which he paid pursuant to Exhibit F, together with pre-judgment interest, and declaring that ROOD has not pre-purchased sewage capacity.

b) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

E. COMPLAINT FOR DAMAGES
COUNT VI
REFUSAL TO TERMINATE DEVELOPMENT AGREEMENT AND REFUND FEES [3]

130. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 58, *supra*, inclusive, as if fully set out herein.

131. As set out in ¶ 2 on page 899 of the original Development Agreement (Exhibit G, hereto,)

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[3] The period of validity of the original Development Agreement ran for five years from February 4, 1988. At the time this action was commenced, the original Development Agreement had **not** become invalid through the operation of time. Time has now operated to make the original Development Agreement, and this is Plaintiffs' first proper opportunity to raise this issue and count.

the Development Agreement is "valid for a period of five (5) years from the date that it is executed by all parties."

132. The original Development Agreement was executed by all parties on February 4, 1988.

133. Five years have now run since the execution of the original Development Agreement, and the original Development Agreement is thus, by its own terms, no longer valid.

WHEREFORE, Plaintiffs demand judgment against Defendant OLDSMAR, as follows:

a) Entering a judgment by the Court requiring OLDSMAR to repay to ROOD all monies he paid to the Development Agreement, together with pre-judgment interest, and requiring the parties to otherwise restore each other to their respective status prior to their entering the original Development Agreement;

b) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

COUNT VI
SLANDER OF TITLE

134. Plaintiffs re-allege and incorporate

herein, ¶¶ 1 through 58, *supra*, inclusive, as if fully set out herein.

135. This Count is pled as an alternative to Count II, *supra*, because if the Court finds that McLAUGHLIN's Notice of *Lis Pendens* forecloses the Development Agreement Amendment, then no Slander of Title will have occurred.

136. By the recording and maintaining of the Amended Development Agreement, which Agreement has never been executed to bind McLAUGHLIN or McLAUGHLIN's predecessor in title, Defendant has slandered the title of Plaintiffs' real property in that Defendant falsely and maliciously communicated to third parties a false idea about McLAUGHLIN's ownership of the subject real property.

137. Said slander has prevented Plaintiffs from freely dealing with the property, including refinancing the property, selling the property, or securing joint venture partners or merchant developers to develop the property.

138. Said slander has also caused Plaintiffs embarrassment and loss of reputation.

139. By the slandering the title of Plaintiffs' real property, Defendant OLDSMAR has damaged

Plaintiffs.

140. The damage inflicted on Plaintiffs by Defendant OLDSMAR was intentional, malicious, without any pretext whatsoever as being in fulfillment of a legitimate governmental purpose.

WHEREFORE, Plaintiffs demand judgment against Defendant OLDSMAR, as follows:

a) Awarding damages to ROOD and McLAUGHLIN in the actual amount of damages incurred by ROOD and McLAUGHLIN, together with pre-judgment interest and costs;

b) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

A jury trial is demanded for this Count.

COUNT VII
DELAY [4]

141. Plaintiffs re-allege and incorporate herein, ¶¶ 1 through 58, *supra*, inclusive, as if fully set out herein.

142. Procedural due process of law, required

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[4] This Court has been dismissed as to Defendant OLDSMAR. However, neither Defendants PINTA nor STASZKO responded to Plaintiffs' Third Amended Complaint, and are in default therein. Accordingly, Plaintiffs include this Count as to the Individual Defendants only.

by the Fifth and Fourteenth Amendments to the Constitution of the United States, requires that applications to agencies acting under color of state law, be processed in an equitable fashion, without undue delay.

143. Procedural due process further requires that delays not be imposed for pretextual reasons or for improper motives.

144. Defendants PINTA and STASZKO, acting under color of state law, in causing delays by refusing to approve a reasonable use of Plaintiffs' property, which refusal was arbitrary, capricious, and not based on competent substantial evidence, in violation of 42 U.S.C. § 1983, denied Plaintiffs procedural due process of law, and therefore the economically beneficial use of their property.

145. The delays and refusal of Defendants to approve any reasonable development proposal for Plaintiffs' real property were pretextual in nature, and based on an improper motive.

146. The delays and refusal of Defendants to approve any reasonable development proposal for Plaintiffs' real property took, through the operation of the City's Land Development Regulations, all economically beneficial use of Plaintiffs' property

without compensation and without due process of law, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and in violation of 42 U.S.C. § 1983 and of the Florida Constitution.

147. Said deprivation occurred beginning in April, 1990, and will continue until restitution is made.

148. Defendants' refusal to consider and approve a reasonable development plan for Plaintiffs' property was simply a pretext to stop, delay and/or minimize the yield of the development of Plaintiffs' land.

149. Defendant PINTA's actions were a pretext to assist his son in his proposed acquisition of the land now owned by McLAUGHLIN.

150. Defendants' delay and refusal to approve a reasonable development plan, further interfered with Plaintiffs' investment-backed expectations, arising from their analysis of the OLDSMAR Zoning Ordinance and of reasonable development potential of their properties.

151. Acting under color of state law, in open, notorious and repeated violation of the Fifth and Fourteenth Amendments to the Constitution of the

United, States, Defendants acted arbitrarily and capriciously, in delaying that approval of a reasonable development plan for Plaintiffs' property.

152. During the period when Defendants refused to approve a reasonable development plan for Plaintiffs' land, Plaintiffs, through the operation of OLDSMAR's Land Development Regulations, lost all economically beneficial use of their property.

153. During this period when Plaintiffs lost all economically beneficial use of their property, Plaintiffs lost opportunities to sell their property at a profit, were required to pay on-going expenses related to their property, and were denied the benefit of the profits from their property.

154. The actions of Defendants, all under color of state law deprived Plaintiffs of Procedural Due Process of Law, as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States. Plaintiffs are entitled to an award of damages for these actions, under color of state law, of Defendants.

155. The damage inflicted on ROOD and McLAUGHLIN by PINTA and STASZKO was intentional, malicious, without any pretext whatsoever as being in fulfillment of a legitimate

governmental purpose.

WHEREFORE, Plaintiffs demand judgment against Defendants PINTA and STASZKO, as follows:

a) Awarding damages to ROOD and McLAUGHLIN in the actual amount of damages incurred by ROOD and McLAUGHLIN, together with pre-judgment interest and costs;

b) Awarding punitive damages to ROOD and McLAUGHLIN in an amount commensurate with the egregiousness of PINTA and STASZKO's actions, and with the PINTA and STASZKO's ability to pay;

c) Awarding Plaintiffs their costs and such other relief as the Court deems just and proper.

A jury trial is demanded for this Count.

Respectfully submitted,

E. B. Rood,
Plaintiff, *pro se*
200 North Pierce Street,
Tampa, Fl., 33602
(813) 229-6591

R. Bruce McLaughlin,
Plaintiff, *pro se*
900 Gulf Blvd., # 303
Indian Rocks Beach, Fl.,
34635
(813) 595-7634

I hereby certify that a true copy of the foregoing has been furnished to: Bryan Kutchins, Esq., P.O. Box 1063, Oldsmar, Fl., 34677, and to Eric Ager, 3375 Hunt Club Drive, Clearwater, Fl., 34621, by regular United States Mail, this _____ day of July, 1994.

R. Bruce McLaughlin

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA CIVIL DIVISION

E. B. ROOD and R. BRUCE McLAUGHLIN,
Plaintiffs

v. Case No. 92-92-3764 CI 07

THE CITY OF OLDSMAR, a Florida Municipal Corporation, THOMAS PINTA and NICK STASZKO, in their individual and personal capacities, and ERIC AGER
Defendants

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LIST OF EXHIBITS

A. Legal Description, ROOD Property

B. Legal Description, McLAUGHLIN/COLLEN Property

C. Ordinance 85-37

D. Resolution 86-14

E. Objection to Sewage Capacity Sale

F. Contract Pursuant to Resolution 86-14

G. Development Agreement

H. Pinellas County Planning Council Resolution 90-4

I. ROOD/OLDSMAR Petition to the Florida Department of Community Affairs

J. Letter, Collen's Attorney to Oldsmar, 5/25/90, reflecting objections of Collen to Amended Development Agreement

K. Purported Amended Development Agreement

L. Demand for Termination of Development Agreement and Refund of Money

M. City's Refusal of Demand

N. Notice of *Lis Pendens* and Supplemental Final Judgment of Foreclosure, McLAUGHLIN v. COLLEN, case No. 90-4133-007

O. Executive Summary, Planning Feasibility Study, Rood/Collen Properties, May, 1987

P. Transportation Analysis, Collen/Rood

Properties, June, 1987

Q. Excerpt, West Oldsmar Plat